



UNITED INDEPENDENT SCHOOL DISTRICT INFORMATIONAL ITEM

TOPIC: Review of LEGAL Policies in TASB Update 96

SUBMITTED BY Gloria S. Rendon **OF:** Asst. to the Superintendent

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: February 20, 2013

Review of LEGAL Policies in TASB Update 96.

AA (LEGAL) – DISTRICT LEGAL STATUS

BAA (LEGAL) – BOARD LEGAL STATUS – POWERS AND DUTIES

BDD (LEGAL) – BOARD INTERNAL ORGANIZATION – ATTORNEY

**DAA (LEGAL) – EMPLOYMENT OBJECTIVES – EQUAL EMPLOYMENT
OPPORTUNITY**

DEC (LEGAL) – COMPENSATION AND BENEFITS – LEAVES AND ABSENCES

**EFAA (LEGAL) – CONSTRUCTIONAL MATERIALS – SELECTION AND
ADOPTION**

FEA (LEGAL) – ATTENDANCE – COMPULSORY ATTENDANCE

FEB (LEGAL) – ATTENDANCE - ATTENDANCE ACCOUNTING

Instruction Sheet

TASB Localized Policy Manual Update 96

District United ISD

Code		Action To Be Taken	Note
AA	(LEGAL)	ADD policy	See explanatory note
BAA	(LEGAL)	Replace policy	Revised policy
BDD	(LEGAL)	ADD policy	See explanatory note
DAA	(LEGAL)	Replace policy	Revised policy
DEC	(LEGAL)	Replace policy	Revised policy
EFAA	(LEGAL)	Replace policy	Revised policy
FEA	(LEGAL)	Replace policy	Revised policy
FEB	(LEGAL)	Replace policy	Revised policy

Explanatory Notes

TASB Localized Policy Manual Update 96

District: United ISD

AA (LEGAL) DISTRICT LEGAL STATUS

This legally referenced policy addressing the district's legal status is recommended for inclusion in the district's policy manual. It explains that the district derives its legal status from both the Constitution and the Education Code.

BAA (LEGAL) BOARD LEGAL STATUS
POWERS AND DUTIES

This legally referenced policy has been reworked to reflect the content and order of provisions in Education Code Chapter 11, Subchapter D, which addresses the powers and duties of the board. Provisions not found in Subchapter D and provisions addressing powers and duties that are conferred on "the district" rather than "the board" have been deleted, as these are included elsewhere in the policy manual.

Several existing provisions from Subchapter D have been added. At MANDATORY POWERS AND DUTIES, item 5 on page 1 states that the board shall collaborate with the superintendent. Item 19 on page 2 states that the board shall carry out other powers and duties as provided by the Education Code or other law.

At DISCRETIONARY POWERS AND DUTIES, beginning on page 2, newly added provisions state that the board may:

- Contract with a public or private entity for educational services (item 7).
- Charge fees per Education Code 11.158 (item 8).
- Change the name of the district (item 9).
- Adopt rules requiring student uniforms (item 10).
- Adopt rules to keep school campuses open after school hours for other uses (item 11).
- Operate a school or program on the campus of an institution of higher education (item 12).
- Operate a school or program outside the boundaries of the district (item 13).

Other newly added provisions address the board's duties regarding ownership and management of DISTRICT PROPERTY and RESTRICTIONS ON BOARD POWERS AND DUTIES, including the use of district resources in relation to real property not owned by the district or for the operation of a hotel.

Several provisions were reworded to better match statutory language.

BDD (LEGAL) BOARD INTERNAL ORGANIZATION
ATTORNEY

This new legally referenced policy includes existing statutory provisions addressing legal services. At PROCUREMENT OF LEGAL SERVICES, the policy explains that the competitive procurement provisions at Education Code 44.031 do not apply to a contract for professional services provided by an attorney. In addition, a district may request the assistance of the ATTORNEY GENERAL on any legal matter, but must pay any associated costs.

DAA (LEGAL) EMPLOYMENT OBJECTIVES
EQUAL EMPLOYMENT OPPORTUNITY

An existing statutory provision on BANKRUPTCY DISCRIMINATION has been added on page 1. This federal provision explains that a district may not deny employment to, terminate the employment of, or discriminate with respect to employment against a person that is or has been a debtor under federal bankruptcy laws.

Explanatory Notes

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DEC (LEGAL) COMPENSATION AND BENEFITS
LEAVES AND ABSENCES

As a reminder that employees may use available personal or sick leave for compensation during a term of active military service, we have repeated from DECB(LEGAL), which is not included in this update, the existing Education Code provision allowing such USE DURING MILITARY LEAVE. (See page 2.)

EFAA (LEGAL) INSTRUCTIONAL MATERIALS
SELECTION AND ADOPTION

At LOCAL SELECTION on page 2, we have revised the provisions to better match statutory text. The revised provisions clarify that for subjects in the FOUNDATION CURRICULUM and ENRICHMENT CURRICULUM, the board must notify the State Board of Education of the materials it selects from the instructional materials list, including the Commissioner's instructional materials list. However, not all selected materials must be from these lists.

FEA (LEGAL) ATTENDANCE
COMPULSORY ATTENDANCE

This legally referenced policy on compulsory attendance has been revised based on Attorney General Opinion GA-946, which held that a student 18 years of age or older cannot commit the offense of failure to attend school, even if the district has adopted a policy requiring the student to attend school until the end of the school year. As a result, we have deleted from page 1 the provision that applied the offense of failure to attend school to STUDENTS 18 AND OVER.

The list of EXEMPTIONS from compulsory attendance has been revised to include a student's enrollment in the Texas Academy of International Studies. (See HIGH SCHOOL REPLACEMENT PROGRAMS on page 3.)

FEB (LEGAL) ATTENDANCE
ATTENDANCE ACCOUNTING

Changes to this legally referenced policy result from amended State Board of Education rules, effective August 23, 2012.

- The rules allow for more flexibility in record storage and permit storage of attendance RECORDS at a secure location separate from the campus. (See page 1.)
- At ATTENDANCE FOR STATE FUNDING PURPOSES, attendance is determined in the second or fifth *instructional hour* rather than *period*. The board can adopt a policy, as previously allowed by rule, or has a new option of delegating to the superintendent the authority to establish procedures for recording absences in an alternate hour. See FEB(LOCAL), below.
- The rules deleted the EXCEPTION allowing a Medicaid eligible student who is participating in the Early and Periodic Screening, Diagnosis, and Treatment Program to be considered in attendance even though the student is not on campus when attendance is taken.

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DISTRICT LEGAL STATUS

AA
(LEGAL)

The District derives its legal status from the Constitution of the State of Texas and from the Texas Education Code as passed and amended by the Legislature of Texas. *Texas Const., Art. VII*

Note: This policy addresses the powers and duties of the Board set forth in Education Code Chapter 11, Subchapter D. For other powers and duties of the Board not listed below, see the applicable policy codes.

The Trustees, as a body corporate, have the exclusive power and duty to govern and oversee the management of the public schools of the District. The Trustees may adopt rules and bylaws necessary to carry out these powers and duties.

All powers and duties not specifically delegated by statute to TEA or the State Board of Education are reserved for the Board.

Education Code 11.151(b), (d)

MANDATORY POWERS
AND DUTIES

The Board shall:

1. Seek to establish working relationships with other public entities to make effective use of community resources and to serve the needs of public school students in the community.
2. Adopt a vision statement and comprehensive goals for the District and the Superintendent, and monitor progress toward those goals. [See AE]
3. Establish performance goals for the District concerning the academic and fiscal performance indicators under Education Code Chapter 39, Subchapters C, D, and J, and any performance indicators adopted by the District. [See AI series]
4. Ensure that the Superintendent is accountable for achieving performance results, recognizes performance accomplishments, and takes action as necessary to meet performance goals. [See BJA]
5. Collaborate with the Superintendent as set forth at Education Code 11.1512(b). [See BJA]
6. Adopt a policy to establish a District- and campus-level planning and decision-making process as required under Education Code 11.251. [See BQ series]
7. Publish an annual educational performance report as required under Education Code 39.306. [See AIB, BQ series]
8. Adopt an annual budget for the District as required under Education Code 44.004. [See CE]
9. Adopt a tax rate each fiscal year as required by Tax Code 26.05. [See CCG]

BOARD LEGAL STATUS
POWERS AND DUTIES

BAA
(LEGAL)

10. Monitor District finances to ensure that the Superintendent is properly maintaining the District's financial procedures and records. [See CF series]
11. Ensure that District fiscal accounts are audited annually as required by Education Code 44.008. [See CFC]
12. Publish an end-of-year financial report for distribution to the community. [See CFA]
13. Conduct elections as required by law. [See BBB]
14. By rule, adopt a process through which District personnel, students or the parents or guardians of students, and members of the public may obtain a hearing from the District administrators and the Board regarding a complaint. [See DGBA, FNG, and GF]
15. Make decisions relating to terminating the employment of District employees employed under a contract to which Education Code Chapter 21 applies, including terminating or not renewing an employment contract to which that chapter applies. [See DF series]
16. Select the internal auditor if the District employs an internal auditor. The internal auditor shall report directly to the Board. *Education Code 11.170* [See DC]
17. Adopt a policy providing for the employment and duties of District personnel. *Education Code 11.1513* [See BJ series, DC series, and DEA series]
18. Limit redundant requests for information and the number and length of written reports that a classroom teacher is required to prepare. The Board shall review paperwork requirements imposed on classroom teachers and transfer to existing noninstructional staff a reporting task that can reasonably be accomplished by that staff. *Education Code 11.164* [See DLB]
19. Carry out other powers and duties as provided by the Education Code or other law.

Education Code 11.1511(b), except as noted

DISCRETIONARY
POWERS AND DUTIES

The Board may:

1. Issue bonds and levy, pledge, assess, and collect an annual ad valorem tax to pay the principal and interest on the bonds as authorized under Education Code 45.001 and 45.003.

2. Levy, assess, and collect an annual ad valorem tax for maintenance and operation of the District as authorized under Education Code 45.002 and 45.003.

Education Code 11.1511(c)(1), (2) [See CCA and CCG]

3. Employ a person to assess or collect the District's taxes as authorized under Education Code 45.231. *Education Code 11.1511(c)(3) [See BDAF]*
4. Enter into contracts as authorized under the Education Code or other law and delegate contractual authority to the Superintendent as appropriate. *Education Code 11.1511(c)(4)*
5. Sue and be sued in the name of the District. *Education Code 11.151(a)*
6. Receive bequests and donations or other moneys or funds coming legally into its hands in the name of the District. A conveyance, devise, or bequest of property for the benefit of the public schools, if not otherwise directed by the donor, vests the property in the Board or their successors in office. *Education Code 11.151(a), .156 [See CDC]*
7. Contract with a public or private entity for that entity to provide educational services for the District. *Education Code 11.157 [See EEL]*
8. Charge fees as set forth at Education Code 11.158. *Education Code 11.158 [See FP]*
9. Change the name of the District. *Education Code 11.160 [See AB]*
10. Adopt rules that require students at a school in the District to wear school uniforms as set forth at Education Code 11.162. *Education Code 11.162 [See FNCA]*
11. Adopt rules to keep school campuses, including school libraries, open for recreational activities, latchkey programs, and tutoring after school hours. *Education Code 11.165*
12. Operate a school or program or hold a class on the campus of an institution of higher education as set forth at Education Code 11.166. *Education Code 11.166 [See GNC]*
13. Operate a school or program, including an extracurricular program, or hold a class outside the boundaries of the District. *Education Code 11.167 [See GNA]*

BOARD LEGAL STATUS
POWERS AND DUTIES

BAA
(LEGAL)

DISTRICT
PROPERTY

The Board may acquire and hold real and personal property in the name of the District. All rights and titles to the school property of the District, whether real or personal, shall be vested in the Trustees and their successors in office. *Education Code 11.151(a), (c)* [See CHG]

The Board may, by resolution, authorize the sale of any property, other than minerals, held in trust for public school purposes. The Trustees may, in any appropriate manner, dispose of property that is no longer necessary for the operation of the District. *Education Code 11.151(c), .154(a)* [See CI]

The Board may, by resolution, authorize the donation of real property and improvements formerly used as a school campus to a municipality, county, state agency, or nonprofit organization as provided at Education Code 11.1541. *Education Code 11.1541* [See CDB]

Minerals in land belonging to the District may be sold to any person. The sale must be authorized by a resolution adopted by majority vote of the Board. *Education Code 11.153* [See CDB]

RESTRICTIONS ON
BOARD POWERS AND
DUTIES

The Board may not:

1. Enter into an agreement authorizing the use of District employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the District. *Education Code 11.168* [See CE]
2. Impose taxes; issue bonds; use or authorize the use of District employees; use or authorize the use of District property, money, or other resources; or acquire property for the design, construction, renovation, or operation of a hotel. *Education Code 11.178* [See CE]

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BOARD INTERNAL ORGANIZATION
ATTORNEY

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PROCUREMENT OF
LEGAL SERVICES

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered by an attorney. *Education Code 44.031(f)* [See CH(LEGAL)]

ATTORNEY GENERAL

The District may request the assistance of the attorney general on any legal matter. The District must pay any costs associated with the assistance. *Education Code 11.151(e)*

EMPLOYMENT OBJECTIVES
EQUAL EMPLOYMENT OPPORTUNITY

DAA
(LEGAL)

NONDISCRIMINATION
— IN GENERAL

The District shall not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of any of the following protected characteristics:

1. Race, color, or national origin;
2. Sex;
3. Religion;
4. Age (applies to individuals who are 40 years of age or older);
5. Disability; or
6. Genetic information [see DAB].

42 U.S.C. 1981; 42 U.S.C. 2000e et seq. (Title VII); 20 U.S.C. 1681 et seq. (Title IX); 42 U.S.C. 12111 et seq. (Americans with Disabilities Act); 29 U.S.C. 621 et seq. (Age Discrimination in Employment Act); 29 U.S.C. 793, 794 (Rehabilitation Act); 42 U.S.C. 2000ff et seq. (Genetic Information Nondiscrimination Act); U.S. Const. Amend. I; Human Resources Code 121.003(f); Labor Code Ch. 21 (Texas Commission on Human Rights Act); Labor Code Ch. 21, Subchapter H (genetic information)

Title VII proscribes employment practices that are overtly discriminatory (disparate treatment), as well as those that are fair in form but discriminatory in practice (disparate impact). Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)

DISPARATE
TREATMENT

Disparate treatment (intentional discrimination) occurs when members of a protected group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. 29 C.F.R. 1607.11

DISPARATE IMPACT

Disparate impact occurs when an employer uses a particular employment practice that causes a disparate (disproportionate) impact on a protected group and the employer fails to demonstrate that the challenged practice is job-related and consistent with business necessity. 42 U.S.C. 2000e-2(k)(1)(A); Labor Code 21.115, .122

BANKRUPTCY
DISCRIMINATION

The District may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under federal bankruptcy laws. The District may not discriminate against a person with whom a bankrupt or debtor has been associated, solely because the bankrupt or debtor is or has been a debtor under federal bankruptcy laws; was insolvent before the commencement of a bankruptcy case or during the case but before the debtor was granted or de-

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	nied a discharge; or has not paid a debt that is dischargeable in the bankruptcy case or that was discharged under the bankruptcy laws. <i>11 U.S.C. 525(a)</i>
JOB QUALIFICATION	The District may take employment actions based on religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification. <i>42 U.S.C. 2000e-2(e); 29 U.S.C. 623(f); Labor Code 21.119</i>
EMPLOYMENT POSTINGS	The District shall not print or publish any notice or advertisement relating to District employment that indicates any preference, limitation, specification, or discrimination based on race, color, religion, sex, disability, or national origin, unless the characteristic is a bona fide occupational qualification. <i>42 U.S.C. 2000e-3(b); Labor Code 21.059</i>
HARASSMENT OF EMPLOYEES	The District has an affirmative duty to maintain a working environment free of harassment on the basis of a protected characteristic. <i>42 U.S.C. 2000e et seq.; 29 C.F.R. 1606.8(a), 1604.11</i> [See DIA]
RETALIATION	The District may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. <i>29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 34 C.F.R. 100.7(e) (Title VI); 34 C.F.R. 110.34 (Age Act); 42 U.S.C. 12203 (ADA); <u>Jackson v. Birmingham Bd. of Educ.</u>, 544 U.S. 167 (2005) (Title IX); Labor Code 21.055</i> [See DIA]
NOTICES	The District shall post in conspicuous places upon its premises a notice setting forth the information the Equal Employment Opportunity Commission deems appropriate to effectuate the purposes of the anti-discrimination laws. <i>29 U.S.C. 627; 42 U.S.C. 2000e-10</i>
SECTION 504 NOTICE	<p>A district that employs 15 or more persons shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability.</p> <p>The notice shall state:</p> <ol style="list-style-type: none">1. That the District does not discriminate in employment in its programs and activities; and2. The identity of the District's 504 coordinator. <p>Methods of notification may include:</p> <ol style="list-style-type: none">1. Posting of notices;

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2. Publication in newspapers and magazines;
3. Placing notices in District publications; and
4. Distributing memoranda or other written communications.

If the District publishes or uses recruitment materials containing general information that it makes available to applicants or employees, it shall include in those materials a statement of its non-discrimination policy.

34 C.F.R. 104.8

AGE DISCRIMINATION The District may take an employment action on the basis of age pursuant to a bona fide seniority system or a bona fide employee benefit plan. However, a bona fide employee benefit plan shall not excuse the failure to hire any individual and no such benefit plan shall require or permit the involuntary retirement of any individual because of age. *29 U.S.C. 623(f); Labor Code 21.102*

SEX DISCRIMINATION The District may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)

GENDER
STEREOTYPES

PREGNANCY The prohibition against discrimination on the basis of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. The District shall treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees for all employment-related purposes, including receipt of benefits under fringe benefit programs. *42 U.S.C. 2000e(k); 29 C.F.R. 1604.10; Labor Code 21.106*

EQUAL PAY The District may not pay an employee at a rate less than the rate the District pays employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort, or responsibility and which are performed under similar working conditions. This rule does not apply if the payment is pursuant to a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. *29 U.S.C. 206(d) (Equal Pay Act); 34 C.F.R. 106.54 (Title IX)*

RELIGIOUS
DISCRIMINATION The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless the District demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship to the District's business. "Undue hardship" means more than a *de minimus* (minimal) cost. *42 U.S.C. 2000e(j); 29 C.F.R. 1605.2; Labor Code 21.108*

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The District may not substantially burden an employee's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. & Rem. Code 110.003*

A person employed or maintained to obtain or aid in obtaining positions for public school employees may not directly or indirectly ask about, orally or in writing, the religion or religious affiliation of anyone applying for employment in a public school of this state. A violation of this provision is a Class B misdemeanor. A person who violates this provision is subject to civil penalties. *Education Code 22.901*

DISABILITY
DISCRIMINATION

The District may not discriminate against a qualified individual on the basis of disability in job application procedures, hiring, advancement, or discharge of employees, compensation, job training, and other terms, conditions, and privileges of employment. *42 U.S.C. 12112(a); 29 C.F.R. 1630.4(b); Labor Code 21.051*

In addition, each district that receives assistance under the Individuals with Disabilities Education Act (IDEA) must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted by the IDEA. *34 C.F.R. 300.177(b)*

DISCRIMINATION
BASED ON LACK OF
DISABILITY

The Americans with Disabilities Act (ADA) and the Texas Commission on Human Rights Act do not provide a basis for a claim that an individual was subject to discrimination because of the individual's lack of disability. *42 U.S.C. 12201(g); 29 C.F.R. 1630.4(b); Labor Code 21.005(c)*

DEFINITION OF
DISABILITY

"Disability" means:

1. An actual disability: a physical or mental impairment [see definition, below] that substantially limits one or more of an individual's major life activities;
2. A record of having such an impairment; or
3. Being regarded as having such an impairment.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

'REGARDED AS'
HAVING AN
IMPAIRMENT

An individual meets the requirement of being "regarded as" having an impairment if the individual establishes that he or she has been subjected to an action prohibited by the ADA because of an actual

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	<p>or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.</p>
TRANSITORY AND MINOR	<p>The “regarded as” prong of the definition does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of six months or less. The “transitory” exception does not apply to the “actual disability” or “record of disability” prongs of the definition.</p>
MITIGATING MEASURES	<p>The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices, prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.</p> <p>The ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses and contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.</p> <p><i>42 U.S.C. 12102(1), (3), (4); 29 C.F.R. 1630.2(g), .3(j)(1); Labor Code 21.002, .0021</i></p>
OTHER DEFINITIONS	<p>“Physical or mental impairment” means:</p>
‘PHYSICAL OR MENTAL IMPAIRMENT’	<ol style="list-style-type: none">1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or2. Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities. <p><i>29 C.F.R. 1630.3(h)</i></p>
‘MAJOR LIFE ACTIVITIES’	<p>“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.</p> <p>“Major life activities” also include the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary,</p>

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bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within the body system.

42 U.S.C. 12102(2); 29 C.F.R. 1630.3(i); Labor Code 21.002

'QUALIFIED
INDIVIDUAL'

"Qualified individual" means an individual who:

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires; and
2. With or without reasonable accommodation, can perform the essential functions of such position. Consideration shall be given to the District's judgment as to what functions of a job are essential. A written job description prepared before advertising or interviewing applicants for the job is evidence of the job's essential functions.

42 U.S.C. 12111(8); 29 C.F.R. 1630.3(m)

REASONABLE
ACCOMMODATIONS

The District is required, absent undue hardship, to make a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the "actual disability" or "record of disability" prongs. The District is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the "regarded as" prong. *42 U.S.C. 12112(b)(5); 29 C.F.R. 1630.4(o)(4), .9; 29 U.S.C. 794; 34 C.F.R. 104.11; Labor Code 21.128* [See DBB regarding medical examinations and inquiries under the Americans with Disabilities Act]

"Reasonable accommodation" includes:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. 12111(9); 29 C.F.R. 1630.2(o); 34 C.F.R. 104.12(b)

"Undue hardship" means an action requiring significant difficulty or expense when considered in light of the nature and cost of the accommodation needed, overall financial resources of the affected facility and the District, and other factors set out in law. *42 U.S.C. 12111(10); 29 C.F.R. 1630.2(p); 34 C.F.R. 104.12(c)*

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DISCRIMINATION BASED ON RELATIONSHIP	The District shall not exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association. <i>42 U.S.C. 12112(b)(4); 29 C.F.R. 1630.8; 34 C.F.R. 104.11</i>
ILLEGAL DRUGS AND ALCOHOL	The term "qualified individual with a disability" does not include any employee or applicant who is currently engaging in the illegal use of drugs, when the District acts on the basis of such use.
DRUG TESTING	The District is not prohibited from conducting drug testing of employees and applicants for the illegal use of drugs or making employment decisions based on the results of such tests. <i>42 U.S.C. 12114(c), (d); Labor Code 21.002(6)(A)</i> [See DHE]
ALCOHOL USE	The term "qualified individual with a disability" does not include an individual who is an alcoholic and whose current use of alcohol prevents the employee from performing the duties of his or her job or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others. <i>42 U.S.C. 12114(a); 29 U.S.C. 705(20)(C); 29 C.F.R. 1630.3(a); 28 C.F.R. 35.104; Labor Code 21.002(6)(A)</i>
QUALIFICATION STANDARDS	It is unlawful for the District to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the District, is shown to be job related for the position in question and is consistent with business necessity. <i>29 C.F.R. 1630.10(a)</i>
DIRECT THREAT TO HEALTH OR SAFETY	As a qualification standard, the District may require that an individual not pose a direct threat to the health or safety of other individuals in the workplace. "Direct threat" means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. <i>42 U.S.C. 12111(3); 29 C.F.R. 1630.2(r); Labor Code 21.002(6)(B)</i>
VISION STANDARDS AND TESTS	The District shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the District, is shown to be job-related for the position in question and consistent with business necessity. <i>42 U.S.C. 12113(c); 29 C.F.R. 1630.10(b); Labor Code 21.115(b)</i>
COMMUNICABLE DISEASES	The District may refuse to assign or continue to assign an individual to a job involving food handling if the individual has an infectious or communicable disease that is transmitted to others through

EMPLOYMENT OBJECTIVES
EQUAL EMPLOYMENT OPPORTUNITY

DAA
(LEGAL)

	<p>handling of food. <i>42 U.S.C. 12113(d); 29 U.S.C. 705(20)(D); 29 C.F.R. 1630.16(e); Labor Code 21.002(6)(B)</i></p>
SERVICE ANIMALS	<p>A district that is subject to the jurisdiction of Title I of the ADA (employment discrimination) or to section 504 of the Rehabilitation Act (employment discrimination) shall comply with the reasonable accommodation requirements of those laws with respect to service animals. [See REASONABLE ACCOMMODATIONS, above]</p> <p>A district that is not subject to either Title I or section 504 shall comply with Title II of the ADA (discrimination by public entity). An employer that is subject to Title II shall comply with 28 C.F.R. part 35, including the requirements relating to service animals at 28 C.F.R. 35.136 [see FBA].</p> <p><i>28 C.F.R. 35.140</i></p>
MILITARY SERVICE	<p>The District shall not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service. The District shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed Services Employment and Re-employment Rights Act (USERRA). <i>38 U.S.C. 4311</i> [See also DECB]</p>
GRIEVANCE POLICIES SECTION 504	<p>A district that receives federal financial assistance and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act. <i>34 C.F.R. 104.7(b), .11</i></p>
AMERICANS WITH DISABILITIES ACT	<p>A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the ADA. <i>28 C.F.R. 35.107, .140</i></p>
TITLE IX	<p>A district that receives federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX. <i>34 C.F.R. 106.8(b); <u>North Haven Board of Education v. Bell</u>, 456 U.S. 512 (1982)</i></p>
COMPLIANCE COORDINATOR	<p>The District shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, the Age Act, and the ADA. The District shall notify all employees of the name, office address, and telephone number of the employee(s) so designated. <i>34 C.F.R. 104.7(b), .11; 28 C.F.R. 35.107, .140; 34 C.F.R. 106.8(b)</i></p>

COMPENSATION AND BENEFITS
LEAVES AND ABSENCES

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Note: This policy addresses leaves in general. For provisions regarding the Family and Medical Leave Act (FMLA), including FML for an employee seeking leave because of a relative's military service, see DECA. For provisions addressing leave for an employee's military service, see DECB.

STATE LEAVE

STATE PERSONAL
LEAVE

The District shall provide employees with five days per year of state personal leave, with no limit on accumulation and no restrictions on transfer among districts. The District may provide additional personal leave beyond this minimum.

The Board may adopt a policy governing an employee's use of state personal leave, except that the policy may not restrict the purposes for which the leave may be used.

Education Code 22.003(a)

STATE SICK LEAVE
(ACCUMULATED
PRIOR TO 1995)

District employees retain any sick leave accumulated as state minimum sick leave under former Section 13.904(a) of the Education Code. Accumulated state sick leave shall be used only for the following:

1. Illness of the employee.
2. Illness of a member of the employee's immediate family.
3. Family emergency.
4. Death in the employee's immediate family.
5. During military leave [see USE DURING MILITARY LEAVE, below].

Acts of the 74th Legislative Session, Senate Bill 1, Sec. 66

FORMER
EDUCATION
SERVICE CENTER
(ESC) EMPLOYEES

The District shall accept the sick leave accrued by an employee who was formerly employed by a regional education service center (ESC), not to exceed five days per year for each year of employment. *Education Code 8.007*

ORDER OF USE

The Board's policy governing an employee's use of state personal leave may not restrict the order in which an employee may use state personal leave and any additional personal leave provided by the District.

An employee who retains any state sick leave is entitled to use the state sick leave, state personal leave, or local personal leave in any order to the extent that the leave the employee uses is appropriate to the purpose of the leave.

Education Code 22.003(a), (f)

COMPENSATION AND BENEFITS
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(LEGAL)

USE DURING MILITARY LEAVE	An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. "Personal leave" includes personal or sick leave available under former law or provided by local policy. <i>Education Code 22.003(d), (e)</i> [See DECB(LEGAL)]
TEMPORARY DISABILITY	Each full-time educator shall be given a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties. The contract or employment of the educator may not be terminated while the educator is on a leave of absence for temporary disability. For purposes of temporary disability leave, pregnancy is considered a temporary disability.
AT EMPLOYEE'S REQUEST	A request for a leave of absence for temporary disability must be made to the Superintendent. The request must: <ol style="list-style-type: none">1. Be accompanied by a physician's statement confirming inability to work;2. State the date requested by the educator for the leave to begin; and3. State the probable date of return as certified by the physician.
BY BOARD AUTHORITY	The Board may adopt a policy providing for placing an educator on leave of absence for temporary disability if, in the Board's judgment in consultation with a physician who has performed a thorough medical examination of the educator, the educator's condition interferes with the performance of regular duties. The educator shall have the right to present to the Board testimony or other information relevant to the educator's fitness to continue in the performance of regular duties. [See DBB]
RETURN TO ACTIVE DUTY NOTICE	The educator shall notify the Superintendent of a desire to return to active duty no later than the 30th day before the expected date of return. The notice must be accompanied by a physician's statement indicating the educator's physical fitness for the resumption of regular duties.
PLACEMENT	An educator returning to active duty after a leave of absence for temporary disability is entitled to an assignment at the school where the educator formerly taught, subject to the availability of an appropriate teaching position. In any event, the educator shall be placed on active duty no later than the beginning of the next school year. A principal at another campus voluntarily may approve the appointment of an employee who wishes to return from leave of absence. However, if no other principal approves the assignment by the beginning of the next school year, the District must place the

COMPENSATION AND BENEFITS
LEAVES AND ABSENCES

DEC
(LEGAL)

	<p>employee at the school at which the employee formerly taught or was assigned.</p>
LENGTH OF ABSENCE	<p>The Superintendent shall grant the length of leave of absence for temporary disability as required by the individual educator. The Board may establish a maximum length for a leave of absence for temporary disability, but the maximum length may not be less than 180 calendar days.</p> <p><i>Education Code 21.409; Atty. Gen. Op. DM-177 (1992); Atty. Gen. Op. H-352 (1974)</i></p>
SICK LEAVE DIFFERENT FROM TEMPORARY DISABILITY LEAVE	<p>An employee's entitlement to sick leave is unaffected by any concurrent eligibility for a leave of absence for temporary disability. The two types of leave are different, and each must be granted by its own terms. <i>Atty. Gen. Op. H-352</i></p>
ASSAULT LEAVE	<p>In addition to all other days of leave, a District employee who is physically assaulted during the performance of regular duties is entitled to the number of days of leave necessary to recuperate from physical injuries sustained as a result of the assault. The leave shall be paid as set forth below at COORDINATION WITH WORKERS' COMPENSATION BENEFITS.</p> <p>A District employee is physically assaulted if the person engaging in the conduct causing injury to the employee:</p> <ol style="list-style-type: none">1. Could be prosecuted for assault; or2. Could not be prosecuted for assault only because the person's age or mental capacity makes the person a nonresponsible person for purposes of criminal liability.
NOTICE OF RIGHTS	<p>Any informational handbook the District provides to employees in an electronic or paper form or makes available by posting on the District's Web site must include notification of an employee's rights regarding assault leave, in the relevant section of the handbook. Any form used by the District through which an employee may request personal leave must include assault leave as an option.</p>
ASSIGNMENT TO ASSAULT LEAVE	<p>At the request of an employee, the District must immediately assign the employee to assault leave. Days of assault leave may not be deducted from accrued personal leave. Assault leave may not extend more than two years beyond the date of the assault. Following an investigation of the claim, the District may change the assault leave status and charge the leave against the employee's accrued personal leave or against the employee's pay if insufficient accrued personal leave is available.</p>

COMPENSATION AND BENEFITS
LEAVES AND ABSENCES

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(LEGAL)

COORDINATION WITH WORKERS' COMPENSATION BENEFITS	<p>Notwithstanding any other law, assault leave benefits due to an employee shall be coordinated with temporary income benefits due from workers' compensation so the employee's total compensation from temporary income benefits and assault leave benefits will equal 100 percent of the employee's weekly rate of pay.</p> <p><i>Education Code 22.003(b)–(c-1)</i></p>
RELIGIOUS OBSERVANCES	<p>The District shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of District business. Such absence shall be without pay unless applicable paid local leave is available. <i>42 U.S.C. 2000e(j), 2000e-2(a); Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 107 S.Ct. 367 (1986); Pinsker v. Joint Dist. No. 28J of Adams and Arapahoe Counties, 735 F.2d 388 (10th Cir. 1984)</i></p>
COMPLIANCE WITH A SUBPOENA	<p>The District may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. <i>Labor Code 52.051(a)</i></p>
JURY DUTY	<p>The District may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against an employee because of the employee's compliance with a summons to appear as a juror. For each regularly scheduled workday on which a nonsalaried employee serves in any phase of jury service, the District shall pay the employee the employee's normal daily compensation. An employee's accumulated personal leave may not be reduced because of the employee's service in compliance with a summons to appear as a juror. <i>Education Code 22.006</i></p>
DEVELOPMENTAL LEAVES OF ABSENCE	<p>The Board may grant a developmental leave of absence for study, research, travel, or other suitable purpose to an employee working in a position requiring a permanent teaching certificate who has served in the District at least five consecutive school years.</p> <p>A developmental leave of absence may be granted for one school year at one-half regular salary or for one-half of a school year at full regular salary. Payment to the employee shall be made periodically by the District in the same manner, on the same schedule, and with the same deductions as if the employee were on full-time duty.</p> <p>An employee on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be an employee of the District for purposes of participating in programs, holding memberships, and receiving benefits afforded by employment in the District.</p> <p><i>Education Code 21.452</i></p>

COMPENSATION AND BENEFITS
LEAVES AND ABSENCES

DEC
(LEGAL)

ABSENCE CONTROL

Uniform enforcement of a reasonable absence-control rule is not retaliatory discharge. For example, a district that terminates an employee for violating a reasonable absence-control provision cannot be liable for retaliatory discharge as long as the rule is uniformly enforced. Continental Coffee Products Co. v. Cazarez, 937 S.W.2d 444 (Tex. 1996) (workers' compensation discrimination case); Texas Division-Tranter, Inc. v. Carrozza, 876 S.W.2d 312 (Tex. 1994) (workers' compensation discrimination case); Swearingen v. Owens-Corning Fiberglas Corp., 968 F.2d 559 (5th Cir. 1992) (workers' compensation discrimination case); Howell v. Standard Motor Prods., Inc., 2001 U.S. Dist LEXIS 12332 (N. D. Tex. 2001) (Family and Medical Leave Act case); Specialty Retailers v. DeMoranville, 933 S.W.2d 490 (Tex. 1996) (age discrimination case); Gonzalez v. El Paso Natural Gas Co., 40 F.E.P. Cases (BNA) 353 (Tex. App.—El Paso 1986, no pet.) (sex discrimination case)

[Some employees may have protected status even after the expiration of all other leave. See CRE and DAA.]

Note: For provisions regarding inventory and requisition of instructional materials, see CMD.

DEFINITIONS

“Instructional material” is defined as content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, online services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional material. *Education Code 31.002(1)*

“Open-source instructional material” is electronic instructional material that is available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional material. *Education Code 31.002(1-a)*

“Technological equipment” is hardware, a device, or equipment necessary for instructional use in the classroom, including to gain access to or enhance the use of electronic instructional materials; or professional use by a classroom teacher. *Education Code 31.002(4)*

SBOE INSTRUCTIONAL
MATERIALS LIST

For each subject and grade level, the State Board of Education (SBOE) shall adopt a list of instructional materials.

The list includes each instructional material that meets applicable physical specifications and contains material covering at least half of the elements of the essential knowledge and skills of the subject and grade level. *Education Code 31.023(a)*

OPEN-SOURCE
INSTRUCTIONAL
MATERIAL

The SBOE shall place open-source instructional material for a secondary-level course submitted for adoption by an eligible institution on the list if it satisfies the requirements described in Education Code 31.0241. *Education Code 31.0241(b)*

COMMISSIONER
INSTRUCTIONAL
MATERIALS LIST

The Commissioner, with input from the SBOE, shall adopt a list of:

1. Electronic instructional material; and
2. Material that conveys information to the student or otherwise contributes to the learning process, including tools, models, and investigative materials designed for use as part of the foundation curriculum for science in kindergarten through

INSTRUCTIONAL MATERIALS
SELECTION AND ADOPTION

EFAA
(LEGAL)

grade 5 and personal financial literacy in kindergarten through grade 8.

Education Code 31.0231(a)

SUPPLEMENTAL
INSTRUCTIONAL
MATERIALS LIST

The SBOE may adopt supplemental instructional materials that are not on the SBOE instructional materials list. Supplemental instructional material contains material covering one or more primary focal points or primary topics of a subject in the required curriculum but is not designed to serve as the sole textbook for a full course. *Education Code 31.035(a)*

LOCAL SELECTION
POLICY

The Board shall adopt a policy for selecting instructional materials. Final selections must be recorded in Board minutes. *19 TAC 66.104(a)*

NOTICE TO SBOE

Each year, during a period established by the SBOE, the Board shall notify the SBOE of instructional materials selected in accordance with Education Code 31.101. *Education Code 31.101(a)*

FOUNDATION
CURRICULUM

For subjects in the foundation curriculum, the Board shall notify the SBOE of the instructional materials it selects from the instructional materials list, including the Commissioner's instructional materials list. *Education Code 31.101(a)(1)*

ENRICHMENT
CURRICULUM

For a subject in the enrichment curriculum, the Board shall notify the SBOE of instructional material it selects from the instructional materials list, including the Commissioner's instructional materials list, or that it selected instructional materials that do not appear on the list. *Education Code 31.101(a)(2)*

SUPPLEMENTAL
MATERIALS

The Board may select supplemental instructional materials adopted by the SBOE, as set forth at Education Code 31.035 [see CMD]. If the Board selects supplemental instructional materials, the District shall certify to TEA that the supplemental instructional materials, in combination with any other instructional materials or supplemental instructional materials used by the District, cover the essential knowledge and skills for the course. *Education Code 31.035(d), (f)*

OPEN-SOURCE
MATERIAL

The District may adopt state-developed open-source instructional material at any time, regardless of the instructional material review and adoption cycle. *Education Code 31.073(c)*

SPECIAL
EDUCATION

Adopted instructional materials shall be supplied to a student in special education classes as appropriate to the level of the student's ability and without regard to the grade for which the instructional material is adopted or the grade in which the student is enrolled. *19 TAC 66.104(m)*

INSTRUCTIONAL MATERIALS
SELECTION AND ADOPTION

EFAA
(LEGAL)

DURATION OF
SELECTION
LISTED
MATERIALS

If the District selects subscription-based instructional material on the SBOE instructional materials list or electronic instructional material on the Commissioner's instructional materials list, the District may cancel the subscription and subscribe to new instructional material on the SBOE list or electronic instructional material on the Commissioner's list before the end of the state contract period if:

1. The District has used the instructional material for at least one school year; and
2. TEA approves the change based on a written request to TEA by the District that specifies the reasons for changing the instructional material used by the District.

Education Code 31.101(e)

OTHER
MATERIALS

For instructional material that is not on the instructional materials list, the District must use the instructional material for the period of the review and adoption cycle the SBOE has established for the subject and grade level for which the instruction material is used.

Education Code 31.101(d)

CRIMINAL OFFENSE

A Board member, administrator, or teacher commits an offense if the person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated.

A Board member, administrator, or teacher commits an offense if the person accepts a gift, favor, or service that:

1. Is given to the person or the person's school;
2. Might reasonably tend to influence the person in the selection of instructional material or technological equipment; and
3. Could not be lawfully purchased with state instructional materials funds.

"Gift, favor, or service" does not include:

1. Staff development, in-service, or teacher training; or
2. Ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

Education Code 31.152

ANCILLARY
MATERIALS

Selection and use of ancillary materials is at the discretion of the Board. *19 TAC 66.104(p)*

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INSTRUCTIONAL MATERIALS
SELECTION AND ADOPTION

EFAA
(LEGAL)

HUMAN SEXUALITY
MATERIALS

Course materials relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS) shall be selected by the Board with the advice of the local school health advisory council. *Education Code 28.004(e)* [See EHAA]

GENERAL RULE

Students who are at least six years of age, or who have been previously enrolled in first grade, and who have not yet reached their 18th birthday shall attend school for the entire period the program is offered, unless exempted as indicated below. Students enrolled in prekindergarten or kindergarten shall attend school.

STUDENTS 18 AND
OVER

A person who voluntarily enrolls in school or voluntarily attends school after the person's 18th birthday shall attend school each school day for the entire period the program of instruction is offered. The District may revoke for the remainder of the school year the enrollment of a person who has more than five unexcused absences in a semester. A person whose enrollment is revoked for exceeding this limit may be considered an unauthorized person on school grounds for the purposes of Education Code 37.107 regarding trespassing.

The Board may adopt a policy requiring the student to attend school until the end of the school year.

ACCELERATED /
COMPENSATORY
PROGRAMS

A student must also attend:

1. An extended-year program for which the student is eligible that is provided by the District for students identified as likely not to be promoted to the next grade level or tutorial classes required by the District under Education Code 29.084 [see EHBC];
2. An accelerated reading instruction program to which the student has been assigned under Education Code 28.006(g) [see EKC];
3. An accelerated instruction program to which the student is assigned under Education Code 28.0211 [see EIE];
4. A basic skills program to which the student is assigned under Education Code 29.086 [see EHBC]; or
5. A summer program provided:
 - a. To a student placed in in-school suspension or other alternative setting, other than a disciplinary alternative education program (DAEP), who has been offered the opportunity to complete each course in which the student was enrolled at the time of removal. [See FO]
 - b. To a student removed to a DAEP who has been offered an opportunity to complete coursework, before the beginning of the next school year. [See FOCA]

Education Code 25.085

ATTENDANCE
COMPULSORY ATTENDANCE

FEA
(LEGAL)

EXEMPTIONS

Students who meet one or more of the following conditions shall be exempt from compulsory attendance requirements:

EQUIVALENCY
DIPLOMA

1. The student is at least 17 years of age and has been issued a high school equivalency certificate or diploma.

PRIVATE OR HOME
SCHOOL

2. The student attends a private or parochial school that includes in its course a study of good citizenship.

A student in a home school shall be exempt from compulsory attendance if he or she is pursuing in good faith a curriculum consisting of books, workbooks, other written materials (including those that appear on an electronic screen of either a computer or video tape monitor), or any combination of these. The curriculum shall be designed to meet basic education goals of reading, spelling, grammar, mathematics, and a study of good citizenship. *TEA v. Leeper*, 893 S.W.2d 432 (Tex. 1994)

SPECIAL
EDUCATION —
NONDISTRICT
PLACEMENT

3. The student is eligible to participate in the District's special education program under Education Code 29.003 and cannot be appropriately served by the resident district.

MEDICAL
CONDITION

4. The student has a temporary and remediable physical or mental condition that renders attendance infeasible and the student has a certificate from a qualified physician that specifies the condition, indicates the prescribed treatment, and covers the anticipated time of absence needed for receiving and recuperating from remedial treatment.

EXPULSION — NO
JJAEP

5. The student has been expelled in accordance with legal requirements in a district that does not participate in a mandatory juvenile justice alternative education program. [See FOD]

17-YEAR-OLD IN
GED COURSE

6. The student is at least 17 years old, is attending a course of instruction to prepare for the high school equivalency examinations, and:
 - a. Has the permission of the student's parent or guardian to attend the course;
 - b. Is required by court order to attend the course;
 - c. Has established a residence separate and apart from the student's parent, guardian, or other person having lawful control of the student; or
 - d. Is homeless as defined by 42 U.S.C. 11302.

ATTENDANCE
COMPULSORY ATTENDANCE

FEA
(LEGAL)

HIGH SCHOOL REPLACEMENT PROGRAMS	7. The student is enrolled in the Texas Academy of Leadership in the Humanities, Texas Academy of Mathematics and Science, or Texas Academy of International Studies.
16-YEAR-OLD IN GED PROGRAM OR JOB CORPS	8. The student is at least 16 years old and is attending a course of instruction to prepare for the high school equivalency examinations, if: <ul style="list-style-type: none">a. The student is recommended to take the course by a public agency that has supervision or custody of the student under a court order; orb. The student is enrolled in a Job Corps training program under the Workforce Investment Act of 1998, 29 U.S.C. 2801.
OTHER EXEMPTION	9. The student is specifically exempted under another law. <i>Education Code 25.086</i>
EXCUSED ABSENCES FOR COMPULSORY ATTENDANCE DETERMINATIONS	The District shall excuse a student from attending school for the following purposes:
RELIGIOUS HOLY DAYS	1. Observing religious holy days. A student who is observing holy days is allowed up to one day of excused travel for traveling to the site where the student will observe the holy days and up to one day of excused travel for traveling from that site.
COURT APPEARANCES	2. Attending a required court appearance. A student who is attending a required court appearance is allowed up to one day of excused travel for traveling to the site where the student will attend the required court appearance and up to one day of excused travel for traveling from that site.
CITIZENSHIP PROCEEDINGS	3. Appearing at a governmental office to complete paperwork required in connection with the student's application for United States citizenship. A student who is appearing at a governmental office to complete such paperwork is allowed up to one day of excused travel for traveling to the site where the student will complete the paperwork and up to one day of excused travel for traveling from that site. 4. Taking part in a United States naturalization oath ceremony. A student who is taking part in such a ceremony is allowed up to one day of excused travel for traveling to the site where the student will take part in the ceremony and up to one day of excused travel for traveling from that site.

ATTENDANCE
COMPULSORY ATTENDANCE

FEA
(LEGAL)

ELECTION CLERKS 5. Serving as an election clerk. A student who is serving as an election clerk is allowed up to one day of excused travel for traveling to the site where the student will serve as an election clerk and up to one day of excused travel for traveling from that site.

HEALTH-CARE APPOINTMENTS 6. Temporary absence resulting from an appointment with a health-care professional if that student commences classes or returns to school on the same day of the appointment. The appointment should be supported by a document such as a note from the health-care professional. "Temporary absence" includes the temporary absence of a student diagnosed with autism spectrum disorder on the day of the student's appointment with a health-care practitioner to receive a generally recognized service for persons with autism spectrum disorder, including applied behavioral analysis, speech therapy, and occupational therapy.

Education Code 25.087(b), (b-3); 19 TAC 129.21(k) [See FEB]

CAMPUS VISITS The District may excuse a student from attending school to visit an institution of higher education accredited by a generally recognized accrediting organization during the student's junior and senior years of high school for the purpose of determining the student's interest in attending the institution of higher education, provided that:

1. The District may not excuse for this purpose more than two days during the student's junior year and two days during the student's senior year; and
2. The District adopts:
 - a. A policy to determine when an absence will be excused for this purpose; and
 - b. A procedure to verify the student's visit at the institution of higher education.

Education Code 25.087(b-2); 19 TAC 129.21(k)(9)

TAPS AT MILITARY FUNERAL In addition, the District may excuse a student in grades 6 through 12 for the purpose of sounding "Taps" at a military honors funeral held in this state for a deceased veteran. *Education Code 25.087(c)*

MAKE-UP WORK The student shall be allowed a reasonable time to make up school work missed on the days described above. If the student satisfactorily completes the work, the days of absence shall be counted as days of compulsory attendance. The student shall not be penalized for the absence. *Education Code 25.087(d)*

ATTENDANCE
COMPULSORY ATTENDANCE

FEA
(LEGAL)

OTHER EXCUSED
ABSENCES

TEMPORARY
ABSENCES

A person required to attend school may be excused for temporary absence resulting from any cause acceptable to the teacher, principal, or Superintendent of the school in which the person is enrolled. *Education Code 25.087(a)*

SPECIAL
EDUCATION
MATTERS

Students may be excused for special education assessment procedures and for special education-related services. *19 TAC 129.21(l)*

MILITARY
DEPENDENTS

A student whose parent or legal guardian is an active duty member of the uniformed services and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the Superintendent to visit with the student's parent or legal guardian relative to such leave or deployment of the parent or guardian. *Education Code 162.002 art. V, § E [See FDD]*

NOTICES TO PARENTS
WARNING NOTICE

The District shall notify a student's parent in writing at the beginning of the school year that, if the student is absent from school on ten or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period, the student's parent is subject to prosecution under Education Code 25.093, and the student is subject to prosecution under Education Code 25.094 or to referral to a juvenile court in a county with a population less than 100,000.

NOTICE OF
ABSENCES

The District shall notify a student's parent if the student has been absent from school, without excuse under Education Code 25.087, on three days or parts of days within a four-week period. The notice must:

1. Inform the parent that:
 - a. It is the parent's duty to monitor the student's school attendance and require the student to attend school,
 - b. The parent is subject to prosecution under Education Code 25.093; and
2. Request a conference between school officials and the parent to discuss the absences.

The fact that a parent did not receive the notices described above is not a defense to prosecution for the parent's failure to require a child to attend school nor for the student's failure to attend school.

Education Code 25.095

ATTENDANCE
COMPULSORY ATTENDANCE

FEA
(LEGAL)

NON-ATTENDANCE
PARENT LIABILITY

A parent or person standing in parental relation commits an offense if:

1. A warning notice is issued,
2. The parent with criminal negligence fails to require the child to attend school as required by law, and
3. The child has absences for the amount of time specified under Education Code 25.094.

The attendance officer [see FED] or other appropriate school official shall file a complaint against the parent in an appropriate court, as permitted under Education Code 25.093.

AFFIRMATIVE
DEFENSE —
PARENT

It is an affirmative defense to prosecution that one or more of the absences required to be proven was excused by a school official or should be excused by the court. A decision by the court to excuse an absence for this purpose does not affect the ability of the District to determine whether to excuse the absence for another purpose.

Education Code 25.093

STUDENT LIABILITY

A student who is 12 years of age or older and younger than 18 years of age, who is required to attend school under the compulsory attendance laws, and who fails to attend school on ten or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period may be prosecuted for nonattendance in:

1. The constitutional county court of the county in which the individual resides or in which the school is located, if the county has a population of 1.75 million or more;
2. The justice court of any precinct in the county in which the student resides;
3. The justice court of any precinct in the county in which the school is located;
4. The municipal court in the municipality in which the child resides; or
5. The municipal court in the municipality in which the school is located.

Education Code 25.094(a)–(b)

CONDUCT IN
NEED OF
SUPERVISION

Conduct indicating a need for supervision includes the absence of a child on ten or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school. "Child" means a per-

ATTENDANCE
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son who is ten years of age or older, who is alleged or found to have engaged in the conduct as a result of acts committed before becoming 18 years of age, and who is required to attend school under Education Code 25.085. *Family Code 51.03(b)(2), (e-1)*

AFFIRMATIVE
DEFENSE —
STUDENT

It is an affirmative defense to prosecution for nonattendance or to an allegation of conduct in need of supervision that one or more of the absences required to be proven were excused by a school official or by the court or that one or more of the absences were involuntary, but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute an offense.

A decision by the court to excuse an absence for this purpose does not affect the ability of the District to determine whether to excuse the absence for another purpose.

Education Code 25.094(f)–(g); Family Code 51.03(d)

DISTRICT COMPLAINT
OR REFERRAL

If a student fails to attend school without excuse on ten or more days or parts of days within a six-month period in the same school year, the District shall within ten school days of the student's tenth absence:

1. File a complaint against the student or the student's parent or both in a county, justice, or municipal court for an offense under Education Code 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000; or
2. Refer the student to a juvenile court for conduct indicating a need for supervision under Family Code 51.03(b)(2).

A court shall dismiss a complaint or referral by the District that does not comply with these requirements.

The District may take the actions listed above if a student fails to attend school without excuse on three or more days or parts of days within a four-week period, but does not fail to attend school for the time specified above.

Education Code 25.0951

FILING
REQUIREMENTS

Each referral to juvenile court for conduct described by Family Code 51.03(b)(2) or complaint filed in county, justice, or municipal court alleging a violation by a student of Education Code 25.094 must:

1. Be accompanied by a statement from the student's school certifying that the school applied the truancy prevention measures [see FED] to the student, and the measures failed to meaningfully address the student's school attendance; and

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2. Specify whether the student is eligible for or receives special education services under Education Code Chapter 29, Subchapter A.

Education Code 25.0915(b)

RECORDS

The District shall maintain records to reflect the average daily attendance (ADA), as required by the Commissioner. The Superintendent, principals, and teachers are responsible to the Board and the state to maintain accurate, current attendance records. *19 TAC 129.21(a)*

Districts shall use the student attendance accounting standards established by the Commissioner to maintain records and make reports on student attendance and student participation in special programs. The official standards are described in TEA's *Student Attendance Accounting Handbook*. *19 TAC 129.1023-.1025*

The Superintendent is responsible for the safekeeping of attendance records and reports. The Superintendent may determine whether the properly certified attendance records or reports for the school year are to be filed in the central office, properly stored on the respective school campuses of the District, or at another secure location. Regardless of where such records are filed or stored, they must be readily available for audit by TEA. *19 TAC 129.21(b)*

MINIMUM
ENROLLMENT

A student must be enrolled for at least two hours of instruction to be considered in membership for one half day, and for at least four hours of instruction to be considered in membership for one full day.

FULL-DAY
STUDENTS

Students enrolled on a full-day basis may earn one full day of attendance each school day.

HALF-DAY
STUDENTS

Students enrolled on a half-day basis may earn only one half day attendance each school day. Attendance is determined for these pupils by recording absences in a period during the half day they are scheduled to be present.

ALTERNATIVE
ATTENDANCE
ACCOUNTING
PROGRAM

Students who are enrolled in and participating in an alternative attendance accounting program approved by the Commissioner shall earn attendance according to the statutory and rule provisions applicable to that program.

ATTENDANCE FOR
STATE FUNDING
PURPOSES

Attendance for all grades shall be determined by the absences recorded in the second or fifth instructional hour of the day, unless the Board adopts a policy, or delegates to the Superintendent the authority to establish procedures for recording absences in an alternate hour, or unless the students for which attendance is being taken are enrolled in and participating in a Commissioner-approved alternative attendance accounting program.

The established period in which absences are recorded may not be changed during the school year.

Students absent during the daily period selected by the District for taking attendance shall be counted absent for the entire day, unless the students are enrolled in and participating in a Commissioner-approved alternative attendance accounting program. Students present at the time attendance is taken shall be counted present for the entire day, unless the students are enrolled in and participating in a Commissioner-approved alternative attendance accounting program.

19 TAC 129.21(g)-(h)

A student in a disciplinary alternative education program shall be counted in computing the average daily attendance of students in the District for the student's time in actual attendance in the program. *Education Code 37.008(f)*

EXCEPTIONS

A student not actually on campus when attendance is taken may be considered in attendance for Foundation School Program purposes if:

BOARD-
APPROVED
ACTIVITIES

1. The student is participating in a Board-approved activity under the direction of a member of the District's professional staff, or an adjunct staff member who has a bachelor's degree and is eligible for participation in TRS. [See FM]

MENTORSHIPS

2. The student is participating in a mentorship approved by District personnel to serve as one or more of the advanced measures needed to complete the Advanced/Distinguished Achievement Program outlined in 19 Administrative Code Chapter 74.

RELIGIOUS HOLY
DAYS

3. The student is observing religious holy days, including days of travel to or from a site where the student will observe holy days. A student who is observing holy days is allowed up to one day of excused travel for traveling to the site where the student will observe the holy days and up to one day of excused travel for traveling from that site. [See FEA]

COURT
APPEARANCE

4. The student is attending a required court appearance, including travel for that purpose. A student who is attending a required court appearance is allowed up to one day of excused travel for traveling to the site where the student will attend the required court appearance and up to one day of excused travel for traveling from that site. [See FEA]

CITIZENSHIP
PROCEEDINGS

5. The student is appearing at a governmental office to complete paperwork required in connection with the student's application for United States citizenship. A student who is appearing at a governmental office to complete such paperwork is allowed up to one day of excused travel for traveling to the site

- where the student will complete the paperwork and up to one day of excused travel for traveling from that site. [See FEA]
6. The student is taking part in a United States naturalization oath ceremony. A student who is taking part in such a ceremony is allowed up to one day of excused travel for traveling to the site where the student will take part in the ceremony and up to one day of excused travel for traveling from that site. [See FEA]
- ELECTION CLERKS 7. The student is serving as an election clerk. A student who is serving as an election clerk is allowed up to one day of excused travel for traveling to the site where the student will serve as an election clerk and up to one day of excused travel for traveling from that site. [See FEA]
- HEALTH-CARE APPOINTMENTS 8. The student is temporarily absent as a result of a documented appointment with a health-care professional during regular school hours, if that student commences classes or returns to school on the same day of the appointment. The appointment should be supported by a document such as a note from the health-care professional. "Temporary absence" includes the temporary absence of a student diagnosed with autism spectrum disorder on the day of the student's appointment with a health-care practitioner to receive a generally recognized service for persons with autism spectrum disorder, including applied behavioral analysis, speech therapy, and occupational therapy. [See FEA]
- CAMPUS VISITS 9. The student is visiting an institution of higher education accredited by a generally recognized accrediting organization during the student's junior and senior years of high school for the purpose of determining the student's interest in attending the institution of higher education, provided that:
- a. The District may not excuse for this purpose more than two days during the student's junior year and two days during the student's senior year; and
 - b. The District adopts:
 - (1) A policy to determine when an absence will be excused for this purpose; and
 - (2) A procedure to verify the student's visit at the institution of higher education. [See FEA]

DROPOUT
RECOVERY
EDUCATION
PROGRAM

10. The student is in attendance at a dropout recovery education program, including a program operated by a public junior college under Education Code 29.402. [See GNC]

TAPS AT
MILITARY
FUNERAL

11. The student is sounding "Taps" at a military honors funeral held in this state for a deceased veteran, provided that the student is enrolled in grade 6 or higher.

OFF-CAMPUS
INSTRUCTION

12. The student's absence is permitted by other conditions related to off-campus instruction described in the *Student Attendance Accounting Handbook*.

Education Code 25.087, 29.081(e); 19 TAC 129.21

DISASTERS

The Commissioner shall adjust the average daily attendance of the District all or part of which is located in an area declared a disaster area by the governor under Government Code Chapter 418 if the District experiences a decline in average daily attendance that is reasonably attributable to the impact of the disaster.

The Commissioner shall make the adjustment required by this section for the two-year period following the date of the governor's initial proclamation or executive order declaring the state of disaster.

Education Code 42.0051

PARENTAL CONSENT
TO LEAVE CAMPUS

Before the District may count a student in attendance under this section or in attendance when the student was allowed to leave campus during any part of the school day, the Board shall adopt a policy, or delegate to the Superintendent the authority to establish procedures, addressing parental consent for a student to leave campus and the District must distribute the policy or procedures to staff and to all parents of students in the District. *19 TAC 129.21(l)*