

Legal Issues in Update 114

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To the District's Policy Contact:

Each time TASB Policy Service updates the model policies, your district has a new opportunity to review TASB's recommendations and consider, or revisit, your local policy choices. The purpose of this memorandum is to identify to the board potential legal problems and best practices that may arise as a result of the district's unique local choices in the policy codes affected by Update 114.

Please note that your district may not have locally developed provisions in a policy code affected by Update 114 as addressed by this memo. For each policy code in which your district does have locally developed provisions or is considering adopting local changes to the TASB model policy, we suggest you review the recommendations below. You can identify a policy with locally developed provisions by looking at the bottom of the policy. A policy that is unique to the district will be indicated with an "X" by the policy code in the footer ("__(LOCAL)-X," for example). A TASB-recommended policy will be indicated by any letter other than an "X" ("__(LOCAL)-A," for example).

In addition, the last paragraphs of this memorandum address general policy writing tips to keep in mind when making any policy revisions.

If you have any questions or concerns about the guidance in this memo, please contact TASB Legal Services at legal@tasb.org or 800.580.5345.

I. Common Legal Issues in Revising Update 114 Local Policies

BE(LOCAL)—Board Meetings

Requiring three or more trustees to request a special meeting or agenda item

- **COMMON ISSUE:** Policy requires the agreement of three or more trustees before a subject will be added to a future agenda; and/or policy requires the agreement of three or more trustees before the presiding officer will call an emergency or special called meeting of the school board.

Occasionally boards adopt policies that require three or more board members to agree before a topic will be added to an upcoming agenda or before the presiding officer will call an emergency or special called meeting. Usually boards that consider such requirements are concerned about managing the length or frequency of meetings or preventing topics of low interest from appearing on board agendas. These policy choices could, however, result in an inadvertent violation of the Open Meetings Act (OMA) if one board member contacts the other members of the board seeking agreement by a second and third board member. *See* Tex. Gov't Code § 551.143 (describing an offense when members of a governmental body engage in a series of communications about public business adding up to a quorum outside of a public meeting). TASB Legal Services urges the district to require the agreement of no more than two board members to put an item on the agenda or to call an emergency or special called meeting.

Furthermore, while the manner in which a board places subjects on upcoming meeting agendas depends on local practice or policy, the attorney general has cautioned governmental entities against adopting procedures that have "the net effect" of precluding an elected representative from placing an

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item on the agenda. See Op. Tex. Att’y Gen. Nos. DM-228 (1993), DM-473 (1998). Such a policy could prevent an individual board member from bringing an issue to the attention of the full board.

- **LEGAL TIP:** Revisions to this local policy should reduce the risk of board members inadvertently violating the OMA by limiting the number of trustees necessary to make decisions about adding agenda items and calling emergency or special board meetings. Work with your school attorney to establish reasonable procedures that allow all board members to propose future agenda topics.

Allowing members of the public to add topics to board meeting agendas

- **COMMON ISSUE:** Policy allows a citizen to request a topic for a future school board meeting agenda.

A citizen who is not on the school board does not have a legal right to request that an item be included on the agenda for a school board meeting. The Texas attorney general has emphasized that school board meetings and other meetings subject to the OMA are not meetings of the public, but rather meetings the public is permitted to attend. The OMA requires a school board to allow public testimony before or during the board’s consideration of an item on the board’s agenda for an open meeting. Tex. Gov’t Code § 551.007. The OMA does not, however, entitle the public to choose items for the agenda. Office of the Attorney General, *Open Meetings Act Handbook*, 39 (2018). If an employee, parent, or citizen files a formal grievance that rises to the board level, the board will be obligated to place the item on a future agenda. Because this policy may create the incorrect conclusion that citizens have a right to have items besides formal grievances placed on a board agenda, we recommend that such a provision be deleted from policy.

- **LEGAL TIP:** Other than the legal requirement to permit public testimony before the board’s consideration of an agenda item at an open meeting, the public is permitted to observe, but not participate in, the open portions of a school board meeting.

Conducting a “pre-meeting” before the posted meeting

- **COMMON ISSUE:** Policy indicates that a quorum or more of the board will meet prior to a regular board meeting to review the agenda.

Any deliberation among or gathering of board members that meets the OMA’s definition of a *meeting* is subject to the requirements of the OMA. Consequently, if a quorum of the board is involved in a workshop or other preliminary meeting held prior to the regular board meeting to discuss upcoming agenda items, the meeting must comply with the OMA. Tex. Gov’t Code § 551.001, et seq. Even if action on school business is prohibited, the definition of a meeting may be met. For example, one court has defined a meeting by deliberation to include a one-way communication spoken by one member of a governmental body and heard by the rest of a quorum. *Bexar Medina Atascosa Water Dist. v. Bexar Medina Atascosa Landowners’ Ass’n*, 2 S.W.3d 459, 461-462 (Tex. App.—San Antonio 1999, pet. denied).

- **LEGAL TIP:** Avoid attempts to discuss school business as a quorum or in a series of communications adding up to a quorum outside of properly posted open meetings.

Requiring a supermajority vote to pass a motion

- **COMMON ISSUE:** Policy requires an affirmative vote of a majority of the board (not just a majority of members present) to pass a motion.

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Boards sometimes add a local policy provision requiring the affirmative votes of a quorum (majority) of the board to pass any motion. In most instances, a school board may transact business with a majority of those trustees present and voting as long as at least a quorum is present. TASB Legal Services advises against any policy that would impose a stricter requirement, since it could disable the board from acting if there are members absent or abstaining from the vote. For more information on voting, see TASB Legal Services' memo [Open Meetings Act: Voting](#).

- **LEGAL TIP:** Following established law and standard meetings procedures, like *Robert's Rules of Order*, will simplify the board's work, especially if the board experiences a vacancy.

BED(LOCAL)—Board Meetings: Public Participation

TASB Policy BED concerns public participation in board meetings. The policy addresses procedures for public participation and limitations on audience participation. If your district is considering adding local language not covered in the TASB model policy or revising the recommended language, see TASB Legal Services' article [Open Meetings Act: Public Comment](#).

CCGB(LOCAL)—Ad Valorem Taxes: Economic Development

Modification of CCGB(LOCAL) related to appraised value limitation agreements

- **COMMON ISSUE:** District chooses to revise TASB recommended language offered at Update 114.

At Update 114, TASB Policy Service offered model language relating to appraised value limitation agreements under the Texas Economic Development Act, Texas Tax Code Chapter 313, at CCGB(LOCAL). This new local policy replaced existing provisions at CCGB(LOCAL), if any. If your district is considering revisions to this model language, TASB Legal Services recommends the district consult its attorney regarding these issues to ensure the provisions meet your local needs.

- **LEGAL TIP:** Revisions to this local policy should be developed in consultation with a district's local attorney.

CDA(LOCAL)—Other Revenues: Investments

Modification of CDA(LOCAL) related to investments

- **COMMON ISSUE:** District chooses to revise TASB recommended language at CDA(LOCAL).

TASB Policy CDA concerns the investment of public funds. The policy addresses investment authority, approved investment instruments, and investment strategies. If your district is considering modifications to the TASB model policy language, please note that the laws governing public funds investment are complex. A professional advising the district about its investment policy or practice should have specialized knowledge of financial matters. For this reason, and because of the importance of properly managing public funds, it is essential that the district consult its private attorney, bond counsel, or other legal/financial adviser for advice on whether the policy conforms to legal requirements and the district's investment needs.

- **LEGAL TIP:** Revisions to this local policy should be developed in consultation with a district's local attorney, bond counsel, or financial adviser.

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CH(LOCAL)—Purchasing and Acquisition

Board Approval of Contracts

- **COMMON ISSUE:** Local policy does not require board approval for contracts at or above a certain amount or creates broad exceptions to board approval.

As a matter of governmental efficiency, school districts typically delegate purchasing authority to the superintendent to enter into most contracts for goods and services. Most district policies include a monetary limit to the superintendent's authority, requiring board approval of any purchase at or above a certain value. Sometimes, however, a board adopts a policy with no monetary limit to the superintendent's purchasing authority. Or, a district may create broad exceptions to the requirement for board approval, such as exceptions for budgeted purchases, large purchases made using a statutory procurement method, or purchases discussed by a board committee.

TASB Legal Services recommends that district policy state clearly when board approval is required so that the lines of purchasing authority are clearly established. State law does not specify an appropriate threshold for board approval, but we recommend that policies require board approval of contracts valued at or above a certain amount as a best practice. Any exceptions to the policy's requirement for board approval should be narrow and specific so as to avoid arbitrary interpretations.

We also recommend that an amount be stated in policy to avoid an inference that the district's accounting practices are inadequate. The commissioner of education may order members of a board of trustees to file financial statements under certain circumstances, including when the commissioner determines that accounting practices are not adequate to safeguard state and district funds. Tex. Educ. Code § 11.064. The commissioner might consider the delegation of unspecified purchasing authority to the superintendent as evidence that the district's practices are not adequate.

- **LEGAL TIP:** Local policy should specify the parameters of a superintendent's purchasing authority.

Emergency Purchasing

- **COMMON ISSUE:** Local policy provisions related to emergency purchasing may be unnecessary or overbroad.

After an emergency or a disaster, districts sometimes seek to adjust their purchasing policy or procedures to address perceived constraints on administrators' authority to respond to the district's needs. The breadth of such changes may inadvertently implicate complicated state and federal legal issues. Depending on a district's existing purchasing policy, changing purchasing policies after an emergency or disaster may not be necessary. The Texas Education Code authorizes the board of trustees to delegate purchasing authority to another designated individual in the event of a catastrophe, emergency, or natural disaster. Tex. Educ. Code § 44.0312(c). Although the Texas Education Code provides additional purchasing flexibility after an emergency, a district's local policy cannot contravene or exceed the authority provided by the law. In some instances, board resolutions and actions at the time of the emergency are necessary to address the situation. Tex. Educ. Code § 44.031(h). Local board policy cannot substitute for legally required actions that necessitate a case-by-case approach.

The delegation of authority to make emergency purchases is unnecessary when a district has delegated general purchasing authority to the superintendent. However, in the absence of such broad, general

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delegation, a board may choose to alter its local policy to include a provision delegating the authority, in the event of a catastrophe, emergency, or natural disaster affecting the district, to contract for the replacement, construction, or repair of school equipment, a school facility, or a part of a school facility, if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff. If your district desires local policy language for such a delegation, sample language is available from TASB Policy Service.

- **LEGAL TIP:** Only delegate emergency purchasing authority to the extent allowed by law.

CKC(LOCAL)—Safety Program/Risk Management: Emergency Plans

Policy CKC covers several emergency management issues. At this code many school boards include provisions to authorize certain school employees or officials to carry handguns on school property, at school events, and at board meetings. While this is a permissible policy choice, we recommend that boards adopt such a policy only on the advice of counsel. For more information, see TASB Legal Services' article, [School Marshals and Other School District Personnel Carrying Firearms](#).

CKE(LOCAL)—Safety Program/Risk Management: Security Personnel

Expanding the jurisdiction of the school district law enforcement

- **COMMON ISSUE:** Policy extends the jurisdiction of district peace officers to school zones, bus stops, and other locations off school property.

Remember that whenever school-based law enforcement shares jurisdiction with another law enforcement agency, the district must establish a memorandum of understanding (MOU) between the school district police department and the law enforcement agencies with which it has overlapping jurisdiction. This MOU, required by Texas Education Code section 37.081(g), must outline reasonable communication and coordination efforts among the departments and agencies.

While Texas Education Code section 37.081 allows districts to commission peace officers with jurisdiction extending throughout the geographical boundaries of the school district, extending jurisdiction beyond the district's property boundaries can have two effects. First, it expands the officers' responsibility because they must protect the safety and welfare of any person in the extended jurisdiction. Second, it exposes the district to increased federal civil rights liability under 42 U.S.C. § 1983. Peace officers and the governmental entity that employs them may be sued under Section 1983 for violations of constitutional rights, such as use of excessive force, failure to train, denial of due process, and unwarranted searches and seizures. While this type of jurisdiction may be appropriate for the district, the increased risk of litigation that it creates should lead the district to proceed carefully and with advice from its school attorney.

- **LEGAL TIP:** Establish an MOU and work with a school attorney if the district is expanding the jurisdiction of district peace officers beyond school property.

CQ(LOCAL)—Technology Resources

Children's Internet Protection Act

- **COMMON ISSUE:** Local policy deletes required provisions regarding filtering devices or software.

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Occasionally, a local policy omits all TASB-recommended language regarding filtering devices or software required by the federal Children’s Internet Protection Act (CIPA). School districts must implement certain internet safety measures and submit certification to the Federal Communications Commission as a prerequisite to receiving universal service discount rates. 47 U.S.C. § 254. Therefore, TASB Legal Services recommends that the CIPA provisions be added to district policy.

- **LEGAL TIP:** Ensure local policy contains required language regarding filtering devices or software in compliance with federal law.

Employee Use of Technology Resources

- **COMMON ISSUE:** Local policy uses vague or problematic terminology to limit employees’ personal use of district’s internet or electronic communications.

Typically, school boards adopt policies at CQ(LOCAL) that notify employees and others as to what the district considers acceptable use of district technology resources. For example, TASB-recommended language states that limited personal use of the technology resources is permitted if the use:

1. Imposes no tangible cost on the district;
2. Does not unduly burden the district’s technology resources; and
3. Has no adverse effect on an employee’s job performance or on a student’s academic performance.

Some local policies allow personal use of the district’s electronic communication system during noninstructional periods but state that “political use” is unacceptable. This restriction is overly broad because it limits employees’ free speech during personal time at work. An employee’s political activity, even in the workplace, is protected by the First Amendment if it involves a matter of public concern, rather than a purely personal matter. *Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 777 F.2d 1046 (1985), *aff’d*, 479 U.S. 801 (1986). The district may impose reasonable time, place, and manner restrictions so that this activity does not take place during class time, for instance. The district may also clarify that paid employee work time and other financial resources of the district, including computers and supplies, may not be used to support political advertising in violation of state law. *Tex. Elec. Code* § 255.003(a). The district cannot, however, prohibit employees from discussing political views during all hours employees are at work since this would also include an employee’s free time, including lunch hours and planning periods.

A similar problem arises with local policy provisions that prohibit “inappropriate” personal use of technology resources. Terms such as “political” and “inappropriate” may be considered too vague to adequately notify an employee of prohibited behavior. For example, one person may consider visiting or commenting on a website devoted to a controversial issue to be political or inappropriate; another person could reasonably consider the same website to be protected expression. Districts should use more specific terms in their local policies, especially if such provisions could form the basis for terminating an employee. In the alternative, a district could develop administrative regulations to provide more specific detail as to what constitutes political use or inappropriate language or material.

- **LEGAL TIP:** Use specific terminology in acceptable use policy or regulations to notify employees of what is considered unacceptable personal use of district technology resources.

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DH(LOCAL)—Employee Standards of Conduct

Reasons for Good Cause Termination

- **COMMON ISSUE:** Local policy defines circumstances constituting good cause.

Some local policy language purports to define what circumstances give rise to good cause for termination. Termination of a contract employee is also subject to Chapter 21 of the Texas Education Code. See TASB Policy DFBA(LEGAL). Be aware that these statutory procedures must be followed when terminating a contractual employee. Also, keep in mind that good cause is determined by an independent hearing examiner in a contested hearing based on previous termination cases and precedent. TASB Legal Services recommends that the district delete any provisions defining good cause from policy and consult with its school attorney before pursuing the termination of an employee's contract.

- **LEGAL TIP:** Policies that attempt to define good cause for termination may violate an employee's right to due process.

Report of Criminal Act to Supervisor

- **COMMON ISSUE:** Local policy requires employees to notify a supervisor of a suspected crime.

Texas Education Code section 37.148 permits a school district employee to report a crime witnessed at the school to any peace officer with authority to investigate the crime. A school district may not require an employee to refrain from reporting a crime or to report a crime only to certain persons or peace officers. Local policy provisions that require an employee to immediately notify a supervisor upon suspicion of fraud or other crime may violate this provision.

- **LEGAL TIP:** Local policy language should not limit the reporting of a crime witnessed at school by requiring an employee to notify a supervisor or other specified individual.

Employment Action Based on Arrest or Indictment

- **COMMON ISSUE:** Local policy requires termination for arrest or indictment for certain crimes.

Districts should use caution in applying local policies requiring employment action based on arrest or indictment. In April 2012, the Equal Employment Opportunity Commission (EEOC) issued updated guidance regarding the role of arrest and conviction records in employment decisions. EEOC, [*Enforcement Guidance on Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964*](#), (Apr. 25, 2012). The guidance cautions that being arrested is not a determination of guilt and making employment decisions based on arrests could lead to claims of discrimination.

In addition, any employee who has a contract of employment, whether under Chapter 21 or a regular employment contract, has a property interest in his or her compensation. Before the district can remove this property interest, the district must afford the employee notice and an opportunity for a hearing, either before the board or before an independent hearing examiner. Tex. Educ. Code § 21.251(a). Accordingly, unless and until the district can provide notice and an opportunity for hearing to a contract employee, the most the law allows the district to do is to suspend the employee *with* pay. We also note that a certified employee who is suspended without pay pending discharge, then subsequently not

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discharged, is entitled to back pay. Tex. Educ. Code § 21.211(c). Additionally, the Texas Education Code allows a district to suspend a certified employee without pay if the employee is convicted or receives deferred adjudication for a felony offense. Tex. Educ. Code § 21.058. Because this provision appears in TASB Policy DF(LEGAL), however, it is not necessary to address it in local policy.

- **LEGAL TIP:** Do not adopt a policy that requires taking employment action because of criminal history information prior to conviction or deferred adjudication.

Employment Action Based on Failure to Pay Debts

- **COMMON ISSUE:** Local policy requires employees to pay personal debts, child support, or taxes.

A policy provision requiring employees to timely pay their debts may violate laws protecting debtors. First, Texas Family Code section 158.209 prohibits an employer from terminating, taking disciplinary action against, or refusing to hire a person subject to an order for withholding of child support. This almost certainly includes withholding orders for past-due child support.

Second, Title III of the Consumer Credit Protection Act prohibits an employer from terminating an employee who is subject to a single garnishment order. 15 U.S.C. § 1674(a).

Third, 11 U.S.C. § 525(b) prohibits a governmental unit from terminating the employment of or taking other action against a person who has filed a bankruptcy proceeding solely because that person is a debtor.

Fourth, the EEOC has taken the position that basing employment decisions on a person's credit history could have a disparate impact on minorities. The EEOC does recognize that in some cases an employer may have a business necessity for looking at an employee's credit status, such as where the employee works with the employer's finances.

Fifth, the Fair Credit Reporting Act prohibits an employer from obtaining an employee's credit history without having first received the employee's written permission. The employee is then entitled to certain protections before any employment action may be taken based on the credit history. 15 U.S.C. § 1681 et seq.

Our final concerns are more practical. Debtors often have valid reasons for refusing to pay their debts, but school boards are not in a position to adjudicate disputes between debtors and creditors. Moreover, even unjustified failure to pay debts is probably not a sufficient reason to dismiss a contract employee unless the district can demonstrate an impact on the employee's ability to do his or her job.

For all of the above reasons, TASB Legal Services recommends that boards not adopt policies authorizing adverse employment action based on an employee's failure to pay debts.

- **LEGAL TIP:** A district should not take employment action based on a failure to pay debts.

EHBB(LOCAL)—Special Programs: Gifted and Talented Students

- **COMMON ISSUE:** Local policy conflicts with state laws regarding programs and policies for gifted and talented students.

The Texas Education Code defines "gifted and talented students" and requires school districts to adopt a process for identifying and serving these students at each grade level. Tex. Educ. Code §§ 29.121, .122.

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TASB Legal Services does not recommend adopting a more restricted definition of a gifted and talented student in local policy.

In addition, TEA rules require districts to develop and disseminate to parents written policies on assessing students for participation in the gifted and talented education program. These policies must include: provisions for ongoing screening and selection of students; assessment measures collected from multiple sources according to each area in the [Texas State Plan for the Education of Gifted/Talented Students \(State Plan\)](#); data and procedures designed to ensure that students from all populations in the district have access to assessment, and, if identified, services for the gifted and talented program; and provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement. District policy must also provide for students to be selected by a committee of at least three local district educators who have received training in the nature and needs of gifted and talented students. 19 Tex. Admin. Code § 89.1.

In 2019, the Texas Legislature enacted House Bill 3, which requires each school district to adopt a policy regarding the use of funds to support the district's gifted and talented program and to certify to the commissioner that the district's program is consistent with the *State Plan*. TEA and TASB collaborated on the new policy language to meet these new requirements in EHBB(LOCAL), which TASB has provided to your district as part of Update 114.

If your district is considering revisions to the TASB model policy language, TASB Legal Services recommends the district ensure that it has addressed each of these required items and the elements in the 2019 *State Plan*.

- **LEGAL TIP:** Define gifted and talented students in accordance with state law. Include in the policy all the required elements for gifted and talented programs.

FFAA(LOCAL)—Wellness and Health Services: Physical Examinations

Lice Policies

- **COMMON ISSUE:** Local policy excludes students with nits or lice from attending school.

School districts have legal authority to adopt a “nit-free” or “lice free” policy, but TASB Legal Services recommends taking into account multiple considerations before adopting a policy that requires students with nits or lice to be sent home from school. The Texas Department of State Health Services (DSHS) does not require the exclusion of students with nits or head lice. A policy requiring that students be sent home may result in students missing valuable instructional time. Instead of sending students home, the DSHS recommends that schools provide information and assistance to students and their families regarding treatment and control of head lice. Therefore, TASB Legal Services recommends that districts provide families with information and support regarding head lice instead of excluding students from attendance.

More information on the guidelines for managing head lice in schools can be found in DSHS's [Managing Head Lice in School Settings and at Home](#).

- **LEGAL TIP:** Provide families with information and support regarding head lice instead of excluding students from attendance.

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Tuberculosis Testing

- **COMMON ISSUE:** Local policy requires all new students, or all students entering school from a foreign country, to show evidence of a tuberculosis skin test before admission.

The DSHS encourages districts in areas with a high prevalence of tuberculosis to use a screening questionnaire to identify students who should receive a skin test. In contrast, the DSHS does not advise universal tuberculosis testing. See DSHS's [Frequently Asked Questions About Tuberculosis](#) and DSHS's [Recommendations for Tuberculosis Screening for School-Aged Children](#).

Although the screening questionnaire indicates that students who have recently moved to the U.S. from a foreign country or traveled to a foreign country may be considered at risk and thus should be referred for testing, DSHS advises that students should not be excluded from school while medical evaluation is in progress, unless the child has signs or symptoms of TB.

TASB Legal Services recommends that district policy regarding tuberculosis be adopted in consultation with guidance from DSHS and local health authorities. If your district is located in an area where use of a tuberculosis questionnaire is recommended, FFAA(LOCAL) may contain TASB-developed language requiring all students entering the district for the first time to provide evidence of having received a tuberculosis screening in accordance with regional and county health department guidelines. We do not recommend singling out students from another country for a more stringent testing requirement, as this could be interpreted as discriminatory.

If local policy requires a tuberculosis skin test before admission, TASB Legal Services recommends ensuring that this requirement is consistent with current local health department guidelines for TB testing in the area. Additionally, in accordance with DSHS advice, we recommend that districts admit students who are referred for tuberculosis testing.

- **LEGAL TIP:** Adopt tuberculosis screening or testing requirements in consultation with local and state health department guidance. Do not use a student's referral for tuberculosis testing as a reason to delay admitting the student.

FL(LOCAL)—Student Records

District Officials

- **COMMON ISSUE:** Local policy defines district officials narrowly.

The federal Family Educational Rights and Privacy Act (FERPA) protects the confidentiality of student records. See 20 U.S.C. § 1232g; 34 C.F.R. part 99. In general, FERPA requires parental consent in order to release a student's education record. However, the law allows education records to be released to a "school official" without parental consent as long as the school official has a legitimate educational interest in the information. 34 C.F.R. §§ 99.30, .31.

In order to rely on the school official exception, a district must designate specific school officials in local policy and notify parents about the designation. If local policy omits a position from the TASB-recommended definition of school officials, the district will be required to obtain parental consent before student records not covered by another exception can be shared with those individuals. While not illegal, this deletion could have unintended practical effects. For example, if a district chooses to

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delete “trustee” from the recommended list of school officials, parental consent would be necessary before the board could hold an expulsion hearing. TASB Legal Services recommends that local policy define “school official” broadly, in accordance with law, in order to ensure efficient information sharing for school-related purposes.

- **LEGAL TIP:** Define “school official” broadly, in accordance with law, so that an individual or entity with a legitimate educational interest may access a student’s education record for district purposes.

Directory Information

- **COMMON ISSUE:** Designation of limited categories of student records as directory information could lead to confusion and inconsistent application.

If the district’s local policy does not designate any student records, or only designates very limited categories of student records as directory information, this may result in unintended consequences and inconsistent application.

- **LEGAL TIP:** Be aware of issues that may arise when policy defines directory information narrowly, and train staff accordingly.

Requestors of Student Information

- **COMMON ISSUE:** Local policy states that the district will not provide directory information to some types of requestors.

FERPA makes a student’s education records confidential unless an exception applies. As discussed above, one exception to the law allows a school district to release information designated as directory information without parental consent to any requestor, as long as parents are notified about the categories of information that will be released, the parties to whom disclosure will be made, and the parents’ right to object. 20 U.S.C. § 1232g, 34 C.F.R. §§ 99.30-.39.

In Texas, state law specifies that any student information not designated as directory information, or designated only for limited school-sponsored purposes, remains confidential under the Public Information Act (PIA). Tex. Educ. Code § 26.013. Furthermore, under the PIA, when a governmental body releases information that is not confidential under other law to a member of the public, the information must be released upon request to all members of the public. Tex. Gov’t Code §§ 552.117, .007, .223.

In other words, a district’s policy for releasing student directory information may distinguish between school-sponsored and non-school sponsored purposes, but it may not discriminate among non-school requestors.

TASB Legal Services recommends that district policy avoid selectively withholding directory information from any specific types of requestor, including charter schools or virtual schools.

- **LEGAL TIP:** Do not distinguish in local policy between types of entities that may request student directory information.

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Video Surveillance Recordings

- **COMMON ISSUE:** Local policy addresses access to video recordings of a student.

Some local policies contain provisions purporting to determine access to video recordings of students. As a general matter, these provisions are unnecessary. A video recording that is directly related to a student is considered an education record under FERPA to the same extent as a paper document. The law does not require local policy to address different formats of records separately.

The status of video recordings under FERPA is also an emerging area of the law. Local policy provisions may not comply with recent guidance from the U.S. Department of Education. See U.S. Dept. of Educ., Student Privacy Policy Office (SPPO), [FAQs on Photos and Videos under FERPA](#) (setting out guidelines for applying FERPA to a photo or video of a student).

Note that, under certain circumstances, federal law may require the district to provide a parent access to a video recording that is directly related to the parent's child. For example, the SPPO advised that a school surveillance video showing two students fighting in a hallway, if used as part of district disciplinary action, is an education record of the two students to which both students' parents have rights under FERPA. Therefore, district policy must not categorically prohibit the provision of surveillance video recordings upon request.

TASB Legal Services recommends that local policy treat all types of student records the same, rather than making distinctions based on the format of the record. District officials should seek legal advice regarding any unique policy provisions on this topic, to ensure that district policy complies with federal law.

- **LEGAL TIP:** Treat all student records the same in local policy, regardless of format or medium.

GKA(LOCAL)—Community Relations: Conduct on School Premises

TASB Policy GKA concerns the conduct of visitors to school property. The policy addresses what items are prohibited on school property and provides the authority to exclude individuals from school property under certain circumstances. If you are considering adding local language not covered in the TASB model policy to this code, you may want to look at our guidance on:

- [Firearms](#) and [knives](#)
- [Visitors](#) to school property
- [Distribution of literature](#) on school property

II. General Policy Development Tips

Creating local policies for school district operations is one of the board's most important roles. Through developing strong board policies, a district can communicate a coherent educational mission and provide clear guidance to help employees implement their duties lawfully and consistently. Good local policies can also reduce the risk of legal challenges. In order to be effective, a board policy must be written as clearly as possible. TASB Legal Services offers the following suggestions as general guidance when a board is considering local policy language.

Legal Issues in Update 114

Locally Defined Terms

As a general matter, school boards should avoid creating local definitions of terms that are defined differently in statute or through case law. For example, policies sometimes attempt to define the circumstances that can lead to a contract employee's termination for good cause. When a contract employee requests a hearing under Chapter 21, however, "good cause" is determined first by an independent hearing examiner based on previous termination cases and legal precedent. Other terms like "fraud" are defined in the Texas Penal Code. In the context of student and employee searches, the term "reasonable suspicion" means something very different from "probable cause." Creating local definitions that conflict even slightly with legally defined terms can inject confusion into local decision-making.

Mixing the (LEGAL) with the (LOCAL)

The district's policy manual contains both "legal" and "local" policies. Legal policies are not adopted by the board. Rather, they are restatements of the current law as it relates to Texas school districts generally. Occasionally, a district chooses to incorporate language from a legal policy into its local policy. TASB automatically updates the legal policies to ensure that they reflect the current law. Unique local policy provisions may not be automatically updated when the law changes. Absent diligent administrative review by the district, any change in state or federal law could cause the district's local policy to be out of date and conflict with governing law. TASB Legal Services recommends that school districts avoid reciting or summarizing legal policy language in local policy.

Want More?

You can find TASB Legal Services' [Policy Development Tips](#) for other parts of your district's policy manual in the TASB Policy Service Resource Library. Policy Development Tips are a work in progress, and new topics will be added over time.