

Vantage Points

A Board Member's Guide to Update 81

Vantage Points is an executive summary, prepared for board members, of the TASB Localized Update. The topic-by-topic outline and the thumbnail descriptions focus attention on key issues to assist local officials in studying specific changes found in the policies. The description of policy changes in ***Vantage Points*** is highly summarized and should not substitute for careful attention to the significantly more detailed, district-specific Explanatory Notes and the policies within the localized update packet.

PLEASE NOTE: This Update 81 ***Vantage Points*** and the Localized Update 81 packet may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.

We welcome your comments or suggestions for improving ***Vantage Points***. Please write to us at TASB Policy Service, P.O. Box 400, Austin, TX 78767-0400, or call us at 800-580-7529 or 512-467-0222.

For further information about Policy Service, visit our Web site at **<http://www.tasb.org/services/policy>**.

© 2007 Texas Association of School Boards, Inc. All rights reserved.

The Big Picture:

Update 81 is drawn almost exclusively from the actions of the 80th Legislature, which passed approximately 200 bills with school-related provisions. While not all of the new laws are cited in legal policies or generate changes to local policies, the number of bills that impact the manual make this a lengthy update. Modifications to district practices appear in all seven sections of the manual and the most significant policy changes are summarized here.

Board

Duties

HB 2563 created, amended, and consolidated duties of the board and the superintendent, resulting in extensive revisions to BAA(LEGAL) and BJA(LEGAL). The bill mandates collaboration between the board and superintendent on items such as student achievement; community support; educational leadership; policies and goals tied to the vision statement and long-range educational plan; professional development; and evaluation of board and superintendent leadership, governance, and teamwork.

A new AE(LEGAL) has been developed to address the HB 2563 requirement that boards adopt a vision statement and comprehensive goals for the district and the superintendent. Once adopted, they may be included in the manual as local policy.

Training

HB 2563 also directs the board, at the last regular meeting of the calendar year, to include in the minutes whether each trustee has completed any training required to be completed as of the meeting date. This requirement can be found at BBD(LEGAL) and is in addition to an existing requirement to announce and record the completion of board member training at the meeting at which the call for elections is normally scheduled.

Terms

A provision from SB 670 allowing the board to change the length of trustee terms can be found at BBB(LEGAL), along with other revisions on the administration of elections. The SB 670 provision allows a district to fully comply with the joint election obligations added by HB 1 in the 79th Legislature, third called session, and further explained in an attorney general's opinion. If the board decides to change the length of trustee terms, BBB(LOCAL) will need to be revised to indicate the new election cycle.

Conflicts Disclosure

BBFA(LEGAL) reflects HB 1491 changes to Chapter 176 of the Local Government Code clarifying some of the conflicts disclosure requirements, including:

- When a conflicts disclosure statement regarding a vendor relationship is required,
- That taxable income must exceed \$2,500 to trigger a filing,
- That taxable income includes investment income, and

- That political contributions and gifts from family members do not need to be reported in a conflicts disclosure statement.

The Texas Ethics Commission must release revised conflict of interest statement and questionnaire forms to comply with these changes by October 1, 2007.

Board Meetings

Several bills prompted revisions to BE(LEGAL) on board meetings:

- SB 1306 adds to the definition of a meeting, for purposes of the Open Meetings Act, an exception for ceremonial events and press conferences if no formal action is taken and discussion of public business is only incidental.
- HB 2563 requires the board to allow the superintendent to present a recommendation on any item that is being voted on. The same bill requires that board member attendance at the meeting be recorded in the minutes.
- SB 1499 allows an emergency meeting to be held when there is a sudden relocation of a large number of residents to the district.
- SB 61 allows the board to act with less than a quorum when a disaster has been declared and a majority of members cannot be present at a board meeting.

At DC(LEGAL), the board's acceptance or rejection of the superintendent's recommendation on the selection of district personnel must now be recorded in the board meeting minutes, pursuant to HB 2563.

Finances

A number of bills also brought about revisions to CH(LEGAL) on purchasing:

Purchasing

- HB 2918 removed catalog purchases as a permissible method for purchases valued at or above \$25,000.
- HB 273 requires a district to consider factors in awarding contracts that were previously optional. The same bill also requires the district to create a management fee report, to be presented at a board meeting, for certain contracts valued at or above \$25,000.
- HB 1886 prohibits the use of interlocal contracts to purchase engineering or architectural services.
- SB 12 requires the board to establish goals to reduce electricity consumption.
- SB 7 addresses the purchase of automated external defibrillators.

Financial Statement

At CFA(LEGAL), HB 978 extends the deadline for publishing the annual financial statement to not later than the 150th day after the end of the fiscal year, which is consistent with the TEA deadline. The minimum requirements for the school fiscal accounting system prescribed by HB 2365 have also been added to this policy.

Depository

BDAE(LOCAL) POLICY CONSIDERATIONS:

As indicated at BDAE(LEGAL), districts now have the option of using a request for proposal process, in addition to the competitive bidding process, to select a depository. A new provision in this local policy allows the board to delegate to the superintendent the authority to determine the method for selecting a depository.

Operations

Automated External Defibrillators

Several legal policies were affected by SB 7, which addresses instruction on CPR and the use of automated external defibrillators (AEDs). CKD(LEGAL), a new code for provisions on medical emergencies, includes the requirement that districts make AEDs available at certain athletic competitions and practices, beginning with the 2007–08 school year. This policy also includes provisions on the use and maintenance of AEDs, the requirement for trained staff, and response procedures for cardiac arrest emergencies. DMA(LEGAL) includes text requiring that certain employees and student athletic trainers participate in instruction provided by the district on AEDs and CPR. The AED certification requirements for employees can be found at DBA(LEGAL).

Public Information

GBAA(LOCAL) POLICY CONSIDERATIONS:

At GBAA(LEGAL), a new section on large or frequent requests for information contains material from HB 2564 meant to address the concerns of governmental entities that receive frequent, large requests from the public. The new law allows districts to charge certain requestors if personnel time spent responding to requests exceeds a specified amount of time established by the district, which may not be less than 36 hours. To make use of this provision, a district must comply with fairly extensive documentation requirements.

If the district wishes to exercise this option to charge individual requestors of public information for personnel time, please contact your policy consultant/analyst so that appropriate language may be added at GBAA(LOCAL).

The revisions to GBA(LEGAL) were initiated by five bills addressing release to the public of certain information, including the results of an educator certification exam, the name of a student involved in an improper relationship with an educator, an audit working paper, Social Security numbers, and information identifying the victim of a crime.

Visitors to Schools

GKC(LOCAL) POLICY CONSIDERATIONS:

As reflected at GKC(LEGAL), SB 9 allows a district to require visitors to show identification and permits the district to establish a database to store such information for security purposes. Further, the district may access the Texas Department of Public Safety database or other databases to determine whether the visitor is a registered sex offender.

SB 9 also requires districts to have a local policy addressing administrator response when a visitor is identified as a sex offender. GKC(LOCAL) authorizes the superintendent, working with campus administrators, to develop procedures for a variety of situations that might arise.

Employees

Criminal History Checks

DBAA is a new code containing provisions on criminal history checks for employees that outline a new system for districts, the State Board for Educator Certification (SBEC), Texas Education Agency (TEA), and Texas Department of Public Safety (DPS).

SB 9 authorizes and requires greatly expanded criminal history information reviews for most educators and other school employees. These reviews include national criminal history background checks, based on the submission of fingerprints, for all certified and currently employed educators, as well as all substitute teachers, whether certified or not, by September 1, 2011, and all noncertified school employees hired on or after January 1, 2008.

SB 9 also requires DPS to create the Criminal History Clearinghouse, an electronic clearinghouse and subscription service that will facilitate access to that information and provide updates of any subsequent criminal history. Districts must access the Clearinghouse for information on substitute teachers and noncertified employees. Based on a review of that information, TEA will certify to districts whether these individuals are employable under the standards imposed by the bill.

Provisions regarding criminal history checks of volunteers and certain employees of contractors can be found at GKG(LEGAL) and CH(LEGAL), respectively.

Also added at DBAA(LEGAL) are provisions from the federal Fair Credit Reporting Act that address limitations on a district's ability to obtain consumer credit reports for employment purposes and identify when a district may take adverse action against an applicant or employee based on a report. Record disposal requirements added by the Fair and Accurate Credit Transactions Act are also included.

DC (LOCAL) POLICY CONSIDERATIONS:

With the creation of the new code, DBAA, all provisions on the review of criminal history records are being removed from DC(LOCAL). Criminal history checks are now required by law, and most provisions previously in local policy are no longer necessary.

**Conflicts
Disclosure**

DBD(LEGAL) reflects the HB 1491 changes to Chapter 176 of the Local Government Code that apply to employees. A district may extend the requirement to file a conflicts disclosure statement to any employee in a position with the authority to approve contracts and must identify these positions in policy.

New restrictions from HB 189 regarding financial benefits received by a superintendent for personal services have also been added to DBD(LEGAL). Any financial benefits must be approved by the board on a case-by-case basis in an open meeting.

**Steroids
Education**

SB 8 requires athletic coaches for UIL activities at or above the seventh grade level to complete training on the health effects of steroids. This addition to DMA(LEGAL) is one segment of the broader state-initiated program for random steroid testing of students who participate in UIL athletics.

**Employee/Board
Relationship**

The relationship between a board member and an employee is affected by new legislation addressing prohibited nepotism and the employee's right to communicate directly with a board member.

For districts in counties with a population over 35,000, a provision from HB 2563 has been added to DBE(LEGAL). In these districts, the board remains subject to the nepotism prohibitions for all personnel even when it has delegated hiring authority to the superintendent. The superintendent, as a public official, is also subject to the nepotism prohibitions for the employees he or she hires. Employees hired before September 1, 2007, are not prohibited from continuing employment.

A SB 135 provision that district policy may not restrict communication between an employee and a board member about a matter relating to the operation of the district is included at DC(LEGAL) and DGBA(LEGAL). The policy may prohibit employee access to board members if the communication relates to an appeal or hearing and both parties to the appeal or hearing are not present.

Grievances

DC(LEGAL) and DGBA(LEGAL) also include, from HB 2563, a requirement that a district’s employment policies allow employees to present grievances to the board.

DGBA(LOCAL) POLICY CONSIDERATIONS:

The new statutory provision that a district may not restrict employee communications with board members outside of the grievance or appeal process has also been incorporated into DGBA(LOCAL).

Pursuant to HB 1622, DGBA(LEGAL) now states that the district’s policy must allow an employee who has a grievance against his or her supervisor to complain to another supervisor if the grievance alleges unlawful harassment or “the violation of the law in the workplace.”

In a new section at DGBA(LOCAL), an employee who alleges a supervisor’s violation of the law may file a Level Two grievance with the superintendent. If the allegation is against the superintendent, the employee may complain directly to the board, beginning at Level Three.

DGBA(LOCAL) also cross-references DIA(LOCAL) when an employee alleges harassment by a supervisor.

Students

Dating Violence

HB 121 requires a district to adopt and implement a dating violence policy to be included in the district improvement plan. The policy requirements, which have been added to the list of district improvement plan components at BQ(LEGAL), include safety planning, enforcement of protective orders, school-based alternatives to protective orders, training for teachers and administrators, counseling for affected students, and awareness education for students and parents.

The requirement for a dating violence policy has also been referenced at FFH(LEGAL). A prohibition against dating violence was included in the 2007 TASB Model Student Code of Conduct.

FFH(LOCAL) POLICY CONSIDERATIONS:

Dating violence is now included in the list of prohibited activities at this code. The definition is from HB 121 and, following the format of the policy, several examples are given. Although all dating violence is prohibited, it will only trigger the procedures detailed in this code if it rises to a certain level of severity.

Physical Activity

EHAB(LEGAL) is affected by SB 530, which revised the daily physical activity requirements for elementary students, now specified as students in kindergarten through grade 5. Elementary students still must participate in 30 minutes of daily physical activity; however, a district may now use the alternative schedule of 135 total minutes during a school week only if the district determines that requiring the daily physical activity is impractical due to scheduling concerns or other factors.

Two aspects of SB 530 are not currently reflected in board policy: changes to the daily physical activity requirements for middle school students, which become effective with the 2008–09 school year, and the requirement for districts to annually assess the physical fitness of students in grades 3–12. The commissioner will be adopting an assessment instrument and rules to implement the physical fitness assessment requirement.

Assessments

As reflected at EK(LEGAL), SB 1031 limits a district's ability to administer local assessments, in subject areas for which a state assessment is administered, to ten percent or less of the instructional days in any school year. Exceptions are allowed for administration of college preparation assessments, advanced placement tests, international baccalaureate examinations, and state assessments.

Also from SB 1031, extensive provisions were added regarding college preparation assessments, which are administered at state cost with a corresponding reduction in state funds to the district. Districts must now administer a preliminary college preparation assessment instrument to eighth and tenth grade students for diagnostic purposes. Students may take a college preparation assessment instrument of their choice in either their eleventh or twelfth grade year.

HB 1844 requires districts to allow home schooled students to take the PSAT/NMSQT or an advanced placement test offered by the district. These students may be charged the same fee, if any, that the district charges its en-

rolled students to take the tests. A district must provide notice of testing opportunities on its Web site or in a newspaper.

**Students Ages
21–25**

FD(LOCAL) POLICY CONSIDERATIONS:

HB 1137 permits a district to admit students who are at least 21 and under 26 for the purpose of completing the requirements of a high school diploma. This option and the provisions for corresponding funding for such students are in FD(LEGAL).

The new provision at FD(LOCAL) does not allow admission of older students. If the board decides to admit these students, please contact your policy consultant/analyst for the appropriate text.

FOC(LEGAL) addresses discipline and FDB(LEGAL) addresses placement of these older students.

**Placement of
Multiple Birth
Siblings**

HB 314 provides that a parent of multiple birth siblings who are assigned to the same grade level and school may request that the students be placed in the same classroom or in different classrooms. Unless the request would require the district to add a class, the district must grant the request. After the first grading period, the principal may reassign the siblings if the original placement is disruptive. A parent may appeal the reassignment; however, the siblings will remain in the classroom chosen by the parent during the appeal.

**Attendance of
Students 18 and
Over**

FEA(LOCAL) POLICY CONSIDERATIONS:

HB 566 language permitting districts to extend compulsory attendance laws to students 18 and over who voluntarily attend or enroll in school has been added to FEA(LEGAL). Even if the district chooses to apply the non-attendance rules to these students, the compulsory attendance provisions do not apply to the students' parents.

Text applying compulsory attendance laws to students 18 and older has been added to FEA(LOCAL). If your district does not wish to apply compulsory attendance laws to these students, please contact your policy consultant/analyst.

Attendance for Credit

FEC(LOCAL) POLICY CONSIDERATIONS:

As detailed in FEC(LEGAL), HB 1137 establishes a new option that districts may offer to students who are at risk of losing credit due to absences.

The local policy now includes text allowing a student who attends less than 90 percent but at least 75 percent of the days a class is offered to obtain credit if the student completes a plan approved by the principal that addresses the instructional requirements of the class. If the student fails to complete the plan approved by the principal or if the student has less than 75 percent attendance, the student may still petition the attendance committee for credit.

If your district will not offer students the option to obtain credit through completion of a principal's plan, please contact your policy consultant/analyst for alternative language.

Expression of Religious Viewpoints

HB 3678, also known as the Religious Viewpoints Antidiscrimination Act, contains extensive provisions on student expression, reflected at FNA(LEGAL) and FNAB(LEGAL), addressing four general areas of student expression: freedom of religious expression, student speakers, religious expression in class assignments, and freedom of association. The law requires a district to:

- Treat a student's expression of a religious viewpoint on an otherwise permissible subject in the same manner as nonreligious speech;
- Adopt a policy establishing a limited public forum for student speakers at all school events at which a student is to publicly speak;
- Evaluate class assignments containing religious content by ordinary academic standards; and
- Allow students to organize religious groups and meetings to the same extent that students are permitted to organize noncurricular student activities and groups.

Included in the bill is a "model" local policy. Districts that adopt the model or a policy that is "substantially identical" will be considered in compliance with the new law. In July, TASB Policy and Legal Services provided materials to all districts regarding the required local policy so that districts could have a policy in place by the start of the school year.

A provision on freedom of speech has also been added to FNA(LEGAL) based on the recent U.S. Supreme Court case *Morse v. Frederick*, which

clarified that because of the special characteristics of the school environment and the governmental interest in stopping student drug abuse, a district may restrict student expression that it reasonably regards as promoting illegal drug use.

Discipline

FOC(LLEGAL), FODA(LLEGAL), and FOE(LLEGAL) have all been modified in accordance with HB 2532, which permits a district to expel a student for Title 5 felony conduct and place the student in either a DAEP or a JJAEP. If the district chooses placement in a JJAEP, the district must reimburse the JJAEP for the actual cost of the student's enrollment.

HB 2532 also prompted revisions to FOE(LLEGAL) regarding a student who is required to register as a sex offender. The district must remove the student from the regular classroom and determine an appropriate placement—either DAEP, JJAEP, or the regular classroom, depending on whether the student is under court supervision. A review committee must examine the student's placement at the end of the first semester of placement and make a recommendation to the board or designee regarding continued placement or return to the regular classroom. The board or designee may reject the committee's recommendation only if it makes certain determinations as detailed in policy.

The 2007 TASB Model Student Code of Conduct also includes sections on these two new discipline scenarios created by HB 2532.