

Agenda of Regular Meeting

The Board of Trustees Westwood Independent School District

A Regular Meeting of the Board of Trustees of Westwood Independent School District will be held August 9, 2021, beginning at 6:30 PM Westwood Administration Office.

The subjects to be discussed or considered or upon which any formal action may be taken are listed below. Items do not have to be taken in the same order as shown on this meeting notice. Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

Due to health and safety concerns related to COVID-19 coronavirus, the meeting will be conducted by video-conference. At least a quorum of the Board will be participating by videoconference or telephone call in accordance with the provisions of Sections 551.123 or 551.127 of the Texas Government Code that have not been suspended by order of the governor.

An electronic copy of the agenda packet is attached to the online notice www.westwoodisd.net. Members of the public who desire to address the Board regarding an item on this agenda must comply with the following registration procedures: send a request through Zoom Chat from 6:15 pm – 6:30 pm the day of the meeting. Including name and topic.

1. **CALL TO ORDER AND ESTABLISH QUORUM**
2. **ROLL CALL**
3. **INVOCATION**
4. **PLEDGE OF ALLEGIANCE/TEXAS PLEDGE**
5. **OPEN FORUM/AUDIENCE PARTICIPATION {Policy BED (Local)}**
6. **Action Item**
 - A. Board to consider and approve the agenda as presented
7. **INFORMATION ITEMS**
 - A. **Finance Update**
Presenter: Kyle Johnson

Westwood ISD Agenda Item Information

Meeting Date: August 9, 2021

Subject: Finance Update - Fiscal Year To Date (FYTD) Compared to last 2 years

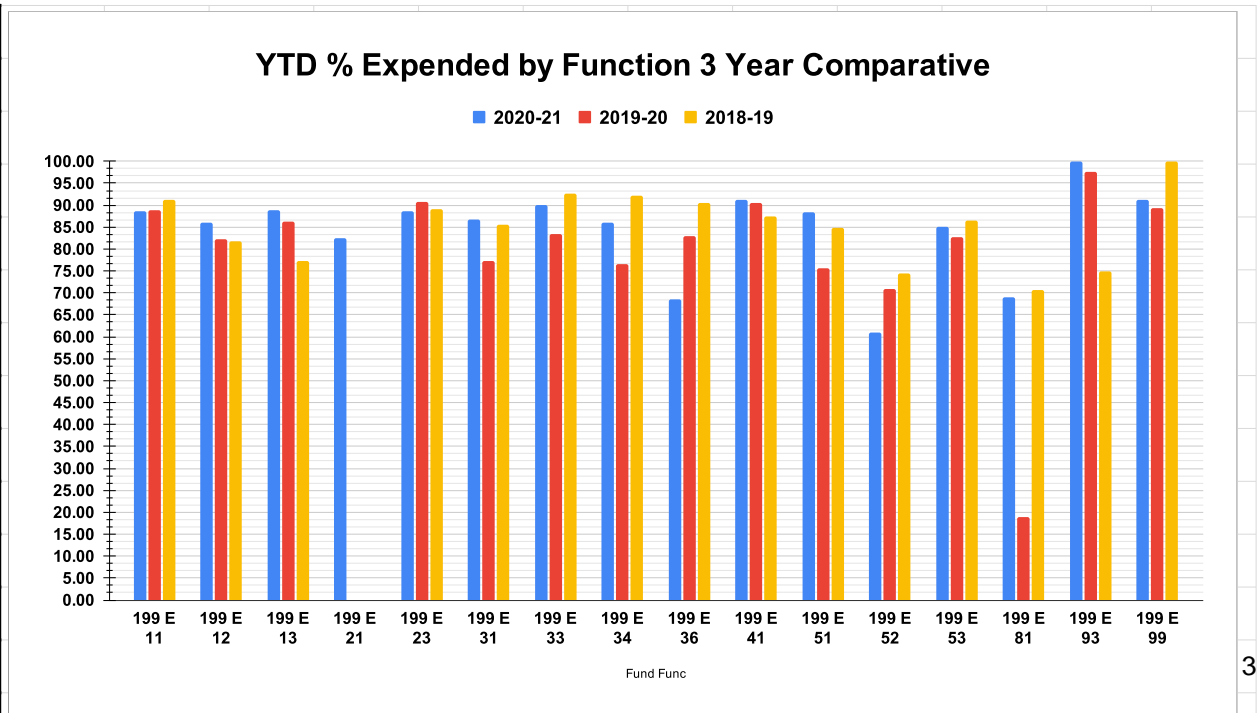
Administrator Responsible: Mr. Johnson

Summary: The presentation will give an update on the FTYD Budget for 20-21 compared to the previous 2 years.

Administration's Recommendation: This is for information purposes only.

Board Approval Required YES NO **X**

| Fund Func | 2020-21 | 2019-20 | 2018-19 |
|-----------|---------|---------|---------|
| 199 E 11 | 88.68 | 88.97 | 91.19 |
| 199 E 12 | 86.04 | 82.27 | 81.72 |
| 199 E 13 | 88.88 | 86.26 | 77.19 |
| 199 E 21 | 82.46 | - | - |
| 199 E 23 | 88.67 | 90.85 | 89.06 |
| 199 E 31 | 86.65 | 77.32 | 85.50 |
| 199 E 33 | 90.09 | 83.42 | 92.73 |
| 199 E 34 | 86.11 | 76.50 | 92.10 |
| 199 E 36 | 68.64 | 83.05 | 90.59 |
| 199 E 41 | 91.23 | 90.56 | 87.49 |
| 199 E 51 | 88.41 | 75.67 | 84.84 |
| 199 E 52 | 60.91 | 70.91 | 74.38 |
| 199 E 53 | 85.01 | 82.77 | 86.38 |
| 199 E 81 | 68.98 | 19.00 | 70.59 |
| 199 E 93 | 100.00 | 97.52 | 74.96 |
| 199 E 99 | 91.17 | 89.39 | 99.92 |



11/12 = 92% of budget expended to be on track

B. Federal Programs Update
Presenter: Tiffany Carwell

Westwood ISD Agenda Item Information

Meeting Date: August 9, 2021

Subject: Federal Programs Annual Update

Administrator Responsible: Tiffany Carwell

Summary: WISD receives federal funding through the Every Student Succeeds (ESSA) Act. An overview of the previous years' federal spending will be provided along with planning amounts for the coming school year.

Administration's Recommendation: information only item

Possible Motion: none

Attachments: [Federal Programs Board Update 2021](#)

Board Approval Required

YES

NO

Every Student Succeeds Act (ESSA) Overview of Federal Spending 2020-2021

Tiffany Carwell
August 9, 2021



Federal Programs

| Federal Program | Purpose |
|------------------------|--|
| Title I, Part A | Improving Basic Programs |
| Title II, Part A | Supporting Effective Instruction |
| Title III, Part A | English Language Acquisition, Language Enhancement, and Academic Achievement |
| Title IV, Part A | Student Support and Academic Enrichment |
| Title V, Part B | Rural and Low Income Schools |
| Perkins V | Strengthening Career and Technical Education for the 21st century |

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#WWWay
#WWEnergyBus

Historical Federal Allocation Trends

| Federal Program | 2017-2018 | 2018-2019 | 2019-2020 | 2020-2021 |
|-------------------------|-----------------------|-------------------------------------|-------------------------------------|--|
| Title I, Part A | \$382,958 | \$378,705 | \$415,833 | \$336,854 |
| Title II, Part A | \$68,687 | \$63,416 | \$59,320 | \$43,786 |
| Title III | SSA with ESC 7 | SSA with ESC 7 (\$9,296) | SSA with ESC 7 (\$8,376) | SSA with ESC 7 (\$8,838) |
| Title IV | \$10,000 | \$29,110 | \$43,876 | \$28,621 8 |

*All totals include carryover and reallocation funds.



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Westwood Low Socioeconomic Status (SES)

| Title I Eligible, Served** | Title I Eligible, Not Served |
|----------------------------|------------------------------|
| Primary - 77% | Junior High - 68% |
| Elementary - 77% | High School - 55% |

District - 68%

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*Based on Fall 2020 Snapshot data.

**Schoolwide program model.



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Overview of Spending 2020-2021

| | |
|---|-----|
| Title I, Part A Improving Basic Programs \$336,854 | |
| Payroll | 78% |
| Contracted Services | 4% |
| Supplies and Materials | 2% |
| Other Operating Costs | <1% |

| | |
|---|-----|
| Title II, Part A Supporting Effective Instruction \$43,786 | |
| Payroll | 31% |
| Contracted Services | 24% |
| Supplies and Materials | 0% |
| Other Operating Costs | 0% |

| | |
|--|-----|
| Title IV, Part A Student Support and Academic Learning \$28,621 | |
| Payroll | 0% |
| Contracted Services | 13% |
| Supplies and Materials | 0% |
| Other Operating Costs | 0% |



Major Initiatives

Improve Instruction

- Instructional Coaches
- Intervention Staff (teachers and paraprofessionals)
- Universal Screener
- Supplemental programs

Teacher and staff support

- Professional Development
- Region 7 services
- Mentor Program

Student Safety and Wellness

- Social Emotional Learning
- Counselor training
- AEDs and vaping monitoring

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2021-2022 Planning Amounts

| | |
|---------------------------|-----------|
| Title I, Part A | \$333,293 |
| Title I, Part C (Migrant) | \$7,415 |
| Title II, Part A | \$59,805 |
| Title III (SSA) | \$9,264 |
| Title IV, Part A | \$24,522 |

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**Amounts do not include carryover and reallocation.*

***Application Submitted - 7/22/2021*



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TEA's Strategic Priorities

- Recruit, support, and retain teachers and principals
- **Build a foundation of reading and math**
- Connect high school to career and college
- Improve low-performing schools



- C. Curriculum Moment
Presenter: Katie Atkins

Westwood ISD Agenda Item Information

Meeting Date: August 9, 2021

Subject: August 2021 Curriculum Moment

Administrator Responsible: Katie Atkins, Ed.D

Summary: Throughout the summer, much preparation has occurred to welcome our students, new staff, and returning staff back to campus. As well, several areas of focus will be high priority items in Westwood ISD during the upcoming school year including high quality instruction, high levels of support for both staff and students, and resource and programming review to determine alignment to these areas of focus.

Administration's Recommendation: not applicable

Possible Motion: none

Attachments: August 2021 Curriculum Moment (ppt)

Board Approval Required

YES

NO

D. Legislative Overview: HB 4545 and SB 1697
Presenter: Katie Atkins

Westwood ISD Agenda Item Information

Meeting Date: August 9, 2021

Subject: Legislative Overview: House Bill 4545 and Senate Bill 1697

Administrator Responsible: Katie Atkins, Ed.D

Summary: Recently HB 4545 and SB 1697 were passed. These bills impact instructional programming for students regarding accelerated learning to address learning loss due to the COVID 19 pandemic, retention, and teacher selection.

Administration's Recommendation: not applicable

Possible Motion: none

Attachments: Legislative Overview: HB 4545 and SB 1697 (ppt)

Board Approval Required

YES

NO

8. **ACTION ITEMS**

- A. Board to consider and possibly approve Math Instructional Programming for Junior High and High School.

Presenter: Katie Atkins

Westwood ISD Agenda Item Information

Meeting Date: August 9, 2021

Subject: Consideration and Possible Approval of Math Instructional Programming for Junior High and High School

Administrator Responsible: Katie Atkins, Ed.D

Summary: High quality instruction for our students is a priority. Current staffing availability indicates a need for subject matter experts in the areas of junior high and high school math. Using Elevate K-12, Westwood ISD students would receive high quality instruction in the area of mathematics.

Administration's Recommendation: Please approve the purchase of Elevate K-12 to support high quality instruction in the area of mathematics.

Possible Motion: I move that we approve the purchase of Elevate K-12 to support high quality instruction for junior high and high school mathematics.

Attachments: Elevate K-12 Information Sheet (pdf)

Board Approval Required

YES

NO

- B. Board to consider and possibly approve the 2021-2022 T-TESS appraisers and appraisal calendar
Presenter: Katie Atkins

Westwood ISD Agenda Item Information

Meeting Date: August 9, 2021

Subject: Consideration and Possible Approval of 2021-2022 T-TESS Appraisers and Appraisal Calendar

Administrator Responsible: Katie Atkins, Ed.D

Summary: Each school district is required annually to provide the Board with names of individuals certified to appraise teachers through the Texas Teacher Evaluation and Support System (T-TESS) and T-TESS appraisal calendar.

Administration's Recommendation: Please approve the 2021-2022 T-TESS appraisers and T-TESS appraisal calendar.

Possible Motion: I move that we approve the 2021-2022 T-TESS appraisers and T-TESS appraisal calendar

Attachments: List of 2021-2022 T-TESS Appraisers (pdf)
2021-2022 T-TESS Appraisal Calendar (pdf)

Board Approval Required

YES

NO

- C. Board to consider and possibly approve the consent agenda
 - 1. Minutes of Regular Board Meeting July 12, 2021, and Board Workshop and Special Board Meetings August 2, 2021

Regular Meeting
Monday, July 12, 2021 6:30 PM Central

Westwood Administration Office

Leonard Armstrong: Absent
Carolyn Booker: Present
Angela Choate: Present
Jeff Cooper: Present
Bryan Jones: Absent
Mike Kelly: Present
Ronnie Stanhope: Present

Present: 5, Absent: 2.

Others Present: Wade Stanford, Kyle Johnson, Brenda Bing, Edwin Schuessler, Katie Atkins, Richard Bishop, Scott Nettles; (see attached list for others)

1. CALL TO ORDER AND ESTABLISH QUORUM

Place: Westwood Administration Building

Purpose: Regular Board Meeting

President Dr. Carolyn Booker called the meeting to order at 6:30 pm.

2. ROLL CALL

3. INVOCATION

The invocation was given by Kyle Johnson.

4. PLEDGE OF ALLEGIANCE/TEXAS PLEDGE

5. ACTION ITEM

5.A. BOARD TO CONSIDER APPROVAL OF THE AGENDA

Motion to approve the agenda as presented. This motion, made by Mike Kelly and seconded by Jeff Cooper, Passed.

Leonard Armstrong: Absent, Bryan Jones: Absent, Carolyn Booker: Yea, Angela Choate: Yea, Jeff Cooper: Yea, Mike Kelly: Yea, Ronnie Stanhope: Yea

Yea: 5, Nay: 0, Absent: 2

6. PUBLIC COMMENTS

None

7. INFORMATION ITEMS

7.A. Finance Update

Kyle Johnson discussed the expenses by function through June compared to the last 2 years. Gave a timeline for budget preparation dates for the month of August. Topics in this timeline were Final Budget Amendment, Public Hearing Date and Time, Required Posting Dates, and Approval of Budget and Tax Rate for 2021-2022.

7.B. Student handbooks for the 2021-2022

Dr. Katie Atkins presented on the updates to the Student Handbooks for the 2021-2022 school year. Revisions will occur to the Student Code of Conduct, Dress Code, Promotion and Retention (HB 4545).

7.C. Westwood ISD Compensation Plan 2021-2022

Kyle Johnson discussed the proposed 2021-2022 Compensation Plan. Talked about how pay increases are based on the 'mid-point' and how the 'mid-point' has been shifted by 2% to stay competitive salary wise. Discussed raising the sub pay in all categories by at least \$10 per sub category. Also discussed raising trip pay for bus drivers from \$11/hr to \$15/hr.

7.D. Policy Update 117

Wade Stanford discussed policy update 117. One of the updates allows the Superintendent to act without Emergency Board Meeting in the case of a catastrophic event. Will also be updating administrative regulations.

7.E. 2021-2022 discussion of student dress code

Wade Stanford discussed updates to Student Dress Code. Mr. Jeff Cooper asked for this to be on the agenda and discussed how he thinks kids will learn better with a less restrictive dress code. Mr. Nettles helped with this discussion. Jeans with holes/rips, hair, and anything specific to a particular race or gender were discussed. Proposed changes include: any shirt allowed if not offensive or dealing with gangs/drugs, pants/shorts/capris can have no holes/rips higher than a dollar bill above the knee, ability to wear athletic wear/sweatpants, ability to wear jeans with holes higher than a dollar bill above the knee if no skin is shown (tights under), masks no longer mandatory, males earrings, tattoo visibility (if not offensive) (staff and students), piercings in ear and nose only (gauges, pins or studs only), hair must be neat and clean and not distracting. Cell phone policy has changed.

7.F. Long Range Non-Instructional Facility Plan

Richard Bishop presented plans and drawings to upgrade athletic facilities to bring them up-to-date and in ADA compliance. Showed mock-up designs for the baseball, softball, football fields, competition gym and tennis courts that target player, spectator safety, ADA issues and cosmetic issues.

8. ACTION ITEMS

8.A. Board to consider and possibly approve Region VII Educational Services Contract for the District 2021-2022

Motion to approve Region VII Educational Services Contract for the District 2021-2022.

This motion, made by Mike Kelly and seconded by Ronnie Stanhope, Passed.

Leonard Armstrong: Absent, Bryan Jones: Absent, Carolyn Booker: Yea, Angela Choate:

Yea, Jeff Cooper: Yea, Mike Kelly: Yea, Ronnie Stanhope: Yea

Yea: 5, Nay: 0, Absent: 2

8.B. Board to consider and possibly approve the Region X Educational Services Contract for the District 2021-2022

Motion to approve the Region X Educational Services Contract for the District 2021-2022. This motion, made by Angela Choate and seconded by Jeff Cooper, Passed.

Leonard Armstrong: Absent, Bryan Jones: Absent, Carolyn Booker: Yea, Angela Choate:

Yea, Jeff Cooper: Yea, Mike Kelly: Yea, Ronnie Stanhope: Yea

Yea: 5, Nay: 0, Absent: 2

8.C. Board to consider and possibly approve the Annual Retention Stipend

Motion to approve the retention stipend, to be paid in 2 payments out of ESSER II money, for every benefits eligible employee as of time of payment in November 2021

and as of the last day of school, May 20, 2022.". This motion, made by Jeff Cooper and seconded by Ronnie Stanhope, Passed.

Leonard Armstrong: Absent, Bryan Jones: Absent, Carolyn Booker: Yea, Angela Choate: Yea, Jeff Cooper: Yea, Mike Kelly: Yea, Ronnie Stanhope: Yea
Yea: 5, Nay: 0, Absent: 2

8.D. Consideration and possible approval of a one-time purchase of athletic equipment, a scoreboard, and high school gym bleachers.

Motion to approve the one-time purchase of athletic equipment (washers), scoreboards for baseball, softball and HS gym, and high school visitor gym bleachers. \$153,321.47 is total cost. Approved additional costs to add sponsorship boxes on baseball and softball scoreboards. This motion, made by Carolyn Booker and seconded by Angela Choate, Passed.

Leonard Armstrong: Absent, Bryan Jones: Absent, Carolyn Booker: Yea, Angela Choate: Yea, Jeff Cooper: Yea, Mike Kelly: Yea, Ronnie Stanhope: Yea
Yea: 5, Nay: 0, Absent: 2

Richard Bishop presented quotes for washers, scoreboards, and bleachers.

8.E. Board to consider and possibly approve the 2021-2022 student dress code

Motion to approve the 2021-2022 student dress code as presented with amendment. This motion, made by Ronnie Stanhope and seconded by Jeff Cooper, Passed.

Leonard Armstrong: Absent, Bryan Jones: Absent, Carolyn Booker: Yea, Angela Choate: Yea, Jeff Cooper: Yea, Mike Kelly: Yea, Ronnie Stanhope: Yea
Yea: 5, Nay: 0, Absent: 2

9. Board to consider and possibly approve the consent agenda

Motion to approve the consent agenda as presented. This motion, made by Mike Kelly and seconded by Angela Choate, Passed.

Leonard Armstrong: Absent, Bryan Jones: Absent, Carolyn Booker: Yea, Angela Choate: Yea, Jeff Cooper: Yea, Mike Kelly: Yea, Ronnie Stanhope: Yea
Yea: 5, Nay: 0, Absent: 2

9.A. Minutes of Regular Board Meeting June 14, 2021, Special Board Meeting June 15, 2021, Special Board Meeting June 21, 2021, and Board Workshop, June 21, 2021

9.B. Campus Fundraisers

9.C. Investment Report

9.D. Campus and District Improvement plans for the 2021-2022 school year

10. CLOSED SESSION

The board went into closed session at 9:35 pm.

The board came out of closed session at 9:44 pm.

10.A. Consider and possibly approve District of Innovation Contract- Ag. Science

10.B. Superintendent's evaluation and contract consideration

10.C. Acknowledge professional contracts for the 2021-2022 school year

10.D. Board's self evaluation

11. Board to vote on items discussed in closed session

12. Consider and possibly approve District on Innovation Contract - Ag. Science for the 2021-2022 school year

Board approved professional district on Innovation contract for Ag. Science Teacher - Clay Goolsby. This motion, made by Mike Kelly and seconded by Angela Choate, Passed.

Leonard Armstrong: Absent, Bryan Jones: Absent, Carolyn Booker: Yea, Angela Choate: Yea, Jeff Cooper: Yea, Mike Kelly: Yea, Ronnie Stanhope: Yea
Yea: 5, Nay: 0, Absent: 2

13. Board to consider and possibly approve Superintendent's Contract

Board approved an extension of professional contract for Wade Stanford - Superintendent of Schools. This motion, made by Mike Kelly and seconded by Ronnie Stanhope, Passed.

Leonard Armstrong: Absent, Bryan Jones: Absent, Carolyn Booker: Yea, Angela Choate: Yea, Jeff Cooper: Yea, Mike Kelly: Yea, Ronnie Stanhope: Yea
Yea: 5, Nay: 0, Absent: 2

14. Board to acknowledge professional contracts

Board acknowledged professional teacher contracts for the 2021-2022 school year.

15. ADJOURNMENT

The board adjourned the meeting at 11:16 pm.

Budget Workshop
Monday, August 2, 2021 11:00 AM Central

Westwood Administration Office

Leonard Armstrong: Present
Carolyn Booker: Present
Angela Choate: Absent
Jeff Cooper: Present
Bryan Jones: Present
Mike Kelly: Present
Ronnie Stanhope: Absent
Present: 5, Absent: 2.

1. CALL TO ORDER AND ESTABLISH QUORUM

2. ROLL CALL

3. INVOCATION

given by Dr. Carolyn Booker

4. PLEDGE OF ALLEGIANCE/TEXAS PLEDGE

5. ACTION ITEM

5.A. Board to consider and approve the agenda as presented

Board approved the agenda as presented. This motion, made by Jeff Cooper and seconded by Bryan Jones, Passed.

Angela Choate: Absent, Ronnie Stanhope: Absent, Leonard Armstrong: Yea, Carolyn Booker: Yea, Jeff Cooper: Yea, Bryan Jones: Yea, Mike Kelly: Yea
Yea: 5, Nay: 0, Absent: 2

6. BUDGET WORKSHOP

Board Workshop was presented by Kyle Johnson.

7. ADJOURNMENT

12:30 pm

Leonard Armstrong: Present
Carolyn Booker: Present
Angela Choate: Absent
Jeff Cooper: Present
Bryan Jones: Present
Mike Kelly: Present
Ronnie Stanhope: Absent
Present: 5, Absent: 2.

1. CALL TO ORDER

2. ACTION ITEMS

2.A. Board to consider and approve the agenda as presented

The board approved the agenda as presented. This motion, made by Mike Kelly and seconded by Bryan Jones, Passed.

Angela Choate: Absent, Ronnie Stanhope: Absent, Leonard Armstrong: Yea, Carolyn Booker: Yea, Jeff Cooper: Yea, Bryan Jones: Yea, Mike Kelly: Yea
Yea: 5, Nay: 0, Absent: 2

2.B. Board to consider the date for the public hearing to adopt the budget and set the tax rate for the 2021-2022 school year.

Board approved setting the public hearing to adopt the budget and set the tax rate for the 2021-2022 school year on August 30, 2021 - 6:00 pm at the Westwood Administration Office. This motion, made by Jeff Cooper and seconded by Bryan Jones, Passed.

Angela Choate: Absent, Ronnie Stanhope: Absent, Leonard Armstrong: Yea, Carolyn Booker: Yea, Jeff Cooper: Yea, Bryan Jones: Yea, Mike Kelly: Yea
Yea: 5, Nay: 0, Absent: 2

2.C. Board to consider and possibly approve a budget amendment for the 2020-2021 school year

Budget Amendment for the 2020-2021 school year was approved. This motion, made by Mike Kelly and seconded by Bryan Jones, Passed.

Angela Choate: Absent, Ronnie Stanhope: Absent, Leonard Armstrong: Yea, Carolyn Booker: Yea, Jeff Cooper: Yea, Bryan Jones: Yea, Mike Kelly: Yea
Yea: 5, Nay: 0, Absent: 2

2.D. Board to review and possibly approve the compensation plan for the 2021-2022 school year

The 2021-2022 school year compensation plan as presented by Kyle Johnson was approved. This motion, made by Jeff Cooper and seconded by Bryan Jones, Passed.

Angela Choate: Absent, Ronnie Stanhope: Absent, Leonard Armstrong: Yea, Carolyn Booker: Yea, Jeff Cooper: Yea, Bryan Jones: Yea, Mike Kelly: Yea
Yea: 5, Nay: 0, Absent: 2

2.E. Board to consider and possibly approve the 2021-2022 code of conduct
2021-2022 code of conduct was presented by Katie Atkins was approved. This motion, made by Bryan Jones and seconded by Mike Kelly, Passed.
Angela Choate: Absent, Ronnie Stanhope: Absent, Leonard Armstrong: Yea, Carolyn Booker: Yea, Jeff Cooper: Yea, Bryan Jones: Yea, Mike Kelly: Yea
Yea: 5, Nay: 0, Absent: 2

3. INFORMATION ITEM

3.A. RIPICS Plan
Tiffany Carwell presented to the board the 2021-2022 RIPICS Plan

4. CLOSED SESSION

The president stated the board would go into closed session at 1:13 pm.

4.A. Board to acknowledge professional contracts
4.B. Board to consider district of innovation contract -BIMS for the 2021-2022 school year

5. Reconvene from closed session

The president stated the board would come out of the closed session at 1:32 pm.

6. Discussion and possible approval of action arising from closed session

6.A. Board to possibly approve the District of Innovation - BIMS contract for 2021-2022
The BIMS contract was approved for Julie Florence to teach at Westwood Junior High for the 2021-2022 school year. This motion, made by Carolyn Booker and seconded by Bryan Jones, Passed.
Angela Choate: Absent, Ronnie Stanhope: Absent, Leonard Armstrong: Yea, Carolyn Booker: Yea, Jeff Cooper: Yea, Bryan Jones: Yea, Mike Kelly: Yea
Yea: 5, Nay: 0, Absent: 2

6.B. ADJOURNMENT

1:38 pm

2. Fundraisers
3. Update 117



(LOCAL) Policy Comparison Packet

This packet is generated by an automated process that compares the updated policy to the district's current policy as found in TASB records.

In this packet, you will find:

- Policies being recommended for revision (annotated)
- New policies (not annotated)
- Policies recommended for deletion (annotated in PDF; omitted in Word)

Annotations are shown as follows.

- *Deletions* are shown in a red strike-through font: ~~deleted text~~.
- *Additions* are shown in a blue, bold font: **new text**.
- Blocks of text that have been *moved* without alteration are shown in green, with double underline and double strike-through formatting to distinguish the text's destination from its origin: ~~moved text~~ becomes moved text.
- *Revision bars* appear in the right margin, as above.

Note: While the annotation software competently identifies simple changes, large or complicated changes—as in an extensive rewrite—may be more difficult to follow. In addition, TASB's recent changes to the policy templates to facilitate accessibility sometimes makes formatting changes appear tracked, even though the text remains the same.

For further assistance in understanding policy changes, please refer to the explanatory notes in your Localized Policy Manual update packet or contact your policy consultant.

| | | |
|-----------------|--|--|
| Contact: | School Districts and Education Service Centers | Community Colleges |
| | policy.service@tasb.org | colleges@tasb.org |
| | 800.580.7529 512.467.0222 | 800.580.1488 512.467.3689 |

PURCHASING AND ACQUISITION

CH
(LOCAL)

**Purchasing
Authority**

The Board delegates to the Superintendent the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs ~~\$50,000~~ \$50,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place.

Exception for
Emergency
Contracts

In the event of a catastrophe, emergency, or natural disaster affecting the District, the Board delegates to the Superintendent the authority to contract for the replacement, construction, or repair of school equipment or facilities in accordance with law, if emergency replacement, construction, or repair is necessary for the health and safety of District students and staff. The Superintendent shall report to the Board at the next regular meeting any contract made under this authority. [See Disaster Exception, CH(LEGAL)]

The delegation regarding emergency contracts does not waive competitive purchasing requirements under Education Code Chapter 44. Only the Board is authorized to waive competitive purchasing requirements under limited circumstances in accordance with Education Code 44.031(h). [See Emergency Damage or Destruction, CH(LEGAL)]

Purchasing
Procedures

The Superintendent shall develop purchasing procedures to implement the requirements of state and federal law. [See also CB, CBB, CH(LEGAL), and COA]

Purchasing Method

The Board delegates to the Superintendent the authority to determine the method of purchasing in accordance with CH(LEGAL) or CBB(LEGAL), as appropriate.

*Competitive
Bidding*

If competitive bidding is chosen as the purchasing method, the Superintendent shall prepare bid specifications. All bids shall be in accordance with administrative regulations, and the submission of any electronic bids shall also be in accordance with Board-adopted rules. All bidders shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.

The District may reject any and all bids in accordance with state or federal law, as applicable.

*Competitive
Sealed Proposals*

If competitive sealed proposals are chosen as the purchasing method, the Superintendent shall prepare the request for proposals and/or specifications for items to be purchased. All proposals shall be in accordance with administrative regulations, and the submission of any electronic proposals shall also be in accordance with Board-adopted rules. Proposals received after the specified time shall not be considered. Proposals shall be opened at the time

PURCHASING AND ACQUISITION

CH
(LOCAL)

specified, and all proposers shall be invited to attend the proposal opening. Proposals may be withdrawn prior to the scheduled time of opening. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.

The District may reject any and all proposals in accordance with state or federal law, as applicable.

Electronic Bids or Proposals

Bids or proposals that the District has chosen to accept through electronic transmission shall be administered in accordance with Board-adopted rules. Such rules shall safeguard the integrity of the competitive procurement process; ensure the identification, security, and confidentiality of electronic bids or proposals; and ensure that the electronic bids or proposals remain effectively unopened until the proper time.

Responsibility for Debts

The Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made in accordance with the adopted budget, state law, Board policy, and the District's purchasing procedures. [See CE] The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control. Persons making unauthorized purchases shall assume full responsibility for all such debts.

Purchase Commitments

All purchase commitments shall be made by the Superintendent in accordance with administrative procedures, including the District's purchasing procedures.

Personal Purchases

District employees shall not be permitted to make purchases for personal use through the District's business office.

Compliance with Law

The Superintendent shall establish procedures that ensure that all school facilities within the District comply with applicable laws and local building codes.

Construction Contracts

Prior to advertising, the Board shall determine the project delivery/contract award method to be used for each construction contract valued at or above \$50,000. To assist the Board, the Superintendent shall recommend the project delivery/contract award method that he or she determines provides the best value to the District. [See CV series generally and CBB(LEGAL) for requirements if federal funds are involved.]

For construction contracts valued at or above ~~\$25,000~~ \$25,000, the Superintendent shall also submit the resulting contract to the Board for approval. Lesser expenditures for construction and construction-related materials or services shall be at the discretion of the Superintendent and consistent with law and policy. [See also CH and CBB(LEGAL)]

Note: For provisions regarding delegation of authority for construction contracts in the event of a catastrophe, emergency, or natural disaster affecting the District, see CH(LOCAL).

Change Orders

Change orders permitted by law shall be approved by the Board or its designee prior to any changes being made in the approved plans or the actual construction of the facility.

Project Administration

All construction projects shall be administered by the Superintendent or designee.

The Superintendent shall keep the Board informed concerning construction projects and also shall provide information to the general public.

Final Payment

The District shall not make final payments for construction or the supervision of construction until the work has been completed and the Board has accepted the work.

**Leave
Administration**

The Superintendent shall develop administrative regulations addressing employee leaves and absences to implement the provisions of this policy.

Definitions

The term “immediate family” is defined as:

Immediate Family

1. Spouse.
2. Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands *in loco parentis*.
3. Parent, stepparent, parent-in-law, or other individual who stands *in loco parentis* to the employee.
4. Sibling, stepsibling, and sibling-in-law.
5. Grandparent and grandchild.
6. Any person residing in the employee’s household at the time of illness or death.

For purposes of the Family and Medical Leave Act (FMLA), the definitions of spouse, parent, son or daughter, and next of kin are found in DECA(LEGAL).

Family Emergency

The term “family emergency” shall be limited to disasters and life-threatening situations involving the employee or a member of the employee’s immediate family.

Leave Day

A “leave day” for purposes of earning, ~~using~~**use**, or recording-~~of~~ leave shall mean the number of hours per day equivalent to the employee’s usual assignment, whether full-time or part-time.

School Year

A “school year” for purposes of earning, using, or recording leave shall mean the term of the employee’s annual employment as set by the District for the employee’s usual assignment, whether full-time or part-time.

**Catastrophic Illness
or Injury**

A catastrophic illness or injury is a severe condition or combination of conditions affecting the mental or physical health of the employee or a member of the employee’s immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the District. ~~Such conditions typically require prolonged hospitalization or recovery or are expected to result in disability or death. Conditions relating to pregnancy or childbirth shall be considered catastrophic if they meet the requirements of this paragraph. Complications resulting from pregnancy shall be treated the same as any other condition.~~

Note: For District contribution to employee insurance during leave, see CRD(LOCAL).

Availability

The District shall make state personal leave for the current year available for use at the beginning of the school year. Local leave shall be made available as earned.

State Earning Local Leave

~~An employee shall not earn any local leave when he or she is in unpaid status. An employee using full or proportionate paid leave shall be considered to be in paid status.~~

Deductions

~~Leave Without Pay~~

~~The District shall not approve paid leave for more leave days than have been accumulated in prior years plus leave currently available. Any unapproved absences or absences beyond accumulated and available paid leave shall result in deductions from the employee's pay.~~

~~Leave Proration~~

~~Employed for
Less Than Full
Year~~

If an employee separates from employment with the District before his or her last duty day of the school year, or begins employment after the first duty day of the school year, state personal ~~leave and local~~ leave shall be prorated based on the actual time employed.

If an employee separates from employment before the last duty day of the school year, the employee's final paycheck shall be reduced for state personal leave the employee used beyond his or her pro rata entitlement for the school year.

Recording

~~Leave shall be recorded as follows:~~

- ~~1. Leave shall be recorded in half day increments for all employees.~~
- ~~2. If the employee is taking intermittent FMLA leave, leave shall be recorded in one hour increments.~~

Order of Use

~~Earned compensatory time shall be used before any available paid state and local leave. [See DEA]~~

~~Unless an employee requests a different order, available paid state and local leave shall be used in the following order, as applicable:~~

- ~~1. Local leave.~~
- ~~2. State sick leave accumulated before the 1995-96 school year.~~
- ~~3. State personal leave.~~

~~Use of sick leave pool days shall be permitted only after all available state and local leave has been exhausted.~~

Concurrent Use of Leave

~~When an absent employee is eligible for FMLA leave, the District shall designate the absence as FMLA leave.~~

~~The District shall require the employee to use temporary disability leave and paid leave, including compensatory time, concurrently with FMLA leave.~~

~~An employee receiving workers' compensation income benefits may be eligible for paid or unpaid leave. An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.~~

Medical Certification

An employee shall submit medical certification of the need for leave if:

1. The employee is absent more than three consecutive work-days because of personal illness or illness in the immediate family;
2. The District requires medical certification due to a questionable pattern of absences or when deemed necessary by the supervisor or Superintendent; **or**
- ~~3.~~ The employee requests FMLA leave for the employee's serious health condition; **a serious health condition or that of the employee's** spouse, parent, or child; **or**
- ~~4.3.~~ **The employee requests FMLA leave** for military caregiver **leave purposes.**

In each case, medical certification shall be made by a health-care provider as defined by the FMLA. [See DECA(LEGAL)]

Note: ~~For District contribution to employee insurance during leave, see CRD(LOCAL).~~

State Personal Leave

The Board requires employees to differentiate the manner in which state personal leave is used. :

~~Nondiscretionary~~**No n-Discretionary** Use

~~4.4.~~ **NondiscretionaryNon-discretionary** use of leave shall be for the same reasons and in the same manner as state sick leave accumulated before May 30, 1995. [See DEC(LEGAL)]

NondiscretionaryNon-discretionary use includes leave related to the birth or placement of a child and taken within the first year after the child's birth, adoption, or foster placement.

Discretionary Use

~~2.5.~~ Discretionary use of leave is at the individual employee's discretion, subject to limitations set out below.

COMPENSATION AND BENEFITS
LEAVES AND ABSENCES

DEC
(LOCAL)

~~Limitations~~

Request for
Leave

In deciding whether to approve or deny a ~~The employee shall submit a written~~ request for discretionary use of state personal leave, ~~to the immediate supervisor or designee in advance in accordance with administrative regulations. In deciding whether to approve or deny state personal leave, the supervisor or designee shall not seek or consider the reasons for which an employee requests to use leave. The supervisor or designee shall, however, consider the duration of the requested absence in conjunction with the effect of the employee's absence on the educational program and~~ District operations, as well as the availability of substitutes.

~~Duration of
Leave~~

Discretionary use of state personal leave shall not exceed three consecutive workdays.

Local Leave

~~Each employee~~All employees shall earn four paid local leave days per school year in accordance with administrative regulations.

Local leave shall be noncumulative.

Local leave shall be used according to the terms and conditions of state personal leave. [See ~~State Personal Leave~~STATE PERSONAL LEAVE, above]

Sick Leave Pool

An employee who has exhausted all paid leave ~~as well as any applicable compensatory time~~ and who suffers from a catastrophic illness or injury may request the establishment of a sick leave pool, to which District employees may donate ~~only~~ local leave for use by the eligible employee.

~~If the employee is unable to submit the request, a member of the employee's family or the employee's supervisor may submit the request to establish a sick leave pool.~~

The pool shall cease to exist when the employee no longer needs leave for the purpose requested, uses the maximum number of days allowed under a pool, or exhausts all leave days donated to the sick leave pool.

The Superintendent ~~or designee~~ shall develop regulations for the implementation of the sick leave pool that address the following:

1. Procedures to request the establishment of a sick leave pool;
2. The maximum number of days an employee may donate to a sick leave pool;
3. The maximum number of days per school year an eligible employee may receive from a sick leave pool; and
4. The return of unused days to donors.

| | |
|---|--|
| Appeal | <p>An employee may appeal a decision. All decisions regarding the establishment or implementation of the District's sick leave pool may be appealed in accordance with DGBA(LOCAL), beginning with the Superintendent or appropriate administrator designee.</p> |
| Family and Medical Leave | <p>FMLA leave shall run concurrently with applicable paid leave and compensatory time, as applicable.</p> <hr/> <p>Note: See DECA(LEGAL) for provisions addressing FMLA.</p> <hr/> |
| Twelve-Month Period | <p>For purposes of an employee's entitlement to FMLA leave, the 12-month period shall be July 1 through June 30.</p> |
| Combined Leave for Spouses | <p>When If both spouses are employed by the District, the District shall not limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks, nor shall the District limit military caregiver leave to a combined total of 26 weeks. {See DECA(LEGAL)}</p> |
| Intermittent or Reduced Schedule Leave | <p>The District shall permit use of intermittent or reduced schedule FMLA leave for the care of a newborn child or for the adoption or placement of a child with the employee. {See DECA(LEGAL) for use of intermittent or reduced schedule leave due to a medical necessity.}</p> |
| Certification of Leave | <p>When If an employee requests leave, the employee shall provide certification, in accordance with as required by FMLA regulations, of the need for leave. {See DECA(LEGAL)}</p> |
| Fitness-for-Duty Certification | <p>In accordance with administrative regulations, when If an employee takes FMLA leave due to the employee's own serious health condition, the employee shall provide, before resuming work, a fitness-for-duty certification. If the District will require certification of the employee's ability to perform essential job functions, the District shall provide a list of essential job functions to the employee with the FMLA designation notice.</p> |
| Leave at the End of Semester Leave | <p>When If a teacher takes leave near the end of the semester, the District may require the teacher to continue leave until the end of the semester. {See DECA(LEGAL), LEAVE AT THE END OF A SEMESTER}</p> |
| Failure to Return | <p>If, at the expiration of FMLA leave, the employee is able to return to work but chooses not to do so, the District may require reimbursement of premiums paid by the District during the leave. {See DECA(LEGAL), RECOVERY OF BENEFIT COST}</p> |

Temporary Disability Leave

Any full-time employee whose position requires educator certification by the State Board for Educator Certification or by the District shall be eligible for temporary disability leave. The maximum length of temporary disability leave shall be 180 calendar days. [See DBB(LOCAL) for temporary disability leave placement and DEC(LEGAL) for return to active duty.]

An employee's notification of need for extended absence due to the employee's own medical condition shall be forwarded to the Superintendent ~~or designee~~ as a request for temporary disability leave.

The District shall require the employee to use temporary disability leave and paid leave, including any compensatory time, concurrently with FMLA leave.

Workers' Compensation

Note: Workers' compensation is not a form of leave. The workers' compensation law does not require the continuation of the District's contribution to health insurance. ~~[See CRD(LOCAL) regarding payment of insurance contribution during employee absences.]~~

An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.

No Paid Leave Offset

The District shall not permit the option ~~An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.~~

~~An employee eligible~~ for paid leave offset in conjunction with workers' compensation income benefits. [See CRE], ~~and not on assault leave, may elect in writing to use paid leave.~~

Court Appearances

Absences due to compliance with a valid subpoena or for jury duty shall be fully compensated by the District and shall not be deducted from the employee's pay or leave balance.

Annual Payment Reimbursement for Unused Leave

Each employee ~~All employees~~ shall receive an annual ~~payment reimbursement~~ for unused local leave to a maximum of four days per school year.

The employee ~~Leave~~ shall receive payment for each day of unused local leave ~~be reimbursed~~ at a rate established by the Board.

Days for which the employee received payment ~~that are reimbursed~~ shall not be available to that employee for use in the District.

The rate established by the Board shall be in effect until a new rate is adopted. Any changes to the rate shall apply beginning with the school year following the adoption of the rate change.

Legal Issues in Update 117

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Legal Issues in Update 117

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 117.

Please note that your district may not have locally developed provisions in a policy code affected by Update 117 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 117 Local Policies

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 district 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

Legal Issues in Update 117

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 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 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. The Texas Education Code authorizes the board of trustees to delegate purchasing authority to the superintendent or other designated person in the event of a catastrophe, emergency, or natural disaster. Tex. Educ. Code § 44.0312(c). TASB Policy CH(LOCAL) includes 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 or facilities. In accordance with law, this provision applies only if the emergency replacement, construction, or repair is necessary for the health and safety of district students and staff. If your district has other language and desires TASB's local policy language for such a delegation, language is available from TASB Policy Service.

Remember that the delegation regarding emergency contracts does not waive competitive purchasing requirements under Education Code Chapter 44. Although the Texas Education Code provides some 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.

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

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CV(LOCAL)—Facilities Construction

Board Approval of Contracts

- **COMMON ISSUE:** Local policy does not include a statement that construction contracts valued at or above a certain amount require board approval.

State law authorizes the board to delegate its purchasing authority to a designated person or committee unless that action explicitly must be taken by the board. Tex. Educ. Code § 44.0312. For purchasing construction services, the district must provide potential bidders with notice of the delegation and the limits of the delegation by rule or in the procurement documents. Tex. Gov't Code § 2269.053 (b). Sometimes local policy omits TASB-recommended language providing a threshold value at which construction contracts must be submitted for board approval. By not addressing the issue of delegation of authority, these policies are unclear as to whether, and to what extent, the board has delegated its authority to enter into a construction contract. TASB Legal Services recommends that a specific statement be included in local policy so that the lines of authority are clearly established, particularly since facilities construction contracts frequently involve a high level of vendor competition, community interest, and potential litigation.

- **LEGAL TIP:** Include a statement in local policy requiring board approval of construction contracts valued at or above a certain amount.

Contract Amount Requiring Competitive Procurement

- **COMMON ISSUE:** Local policy changes the contract value that triggers the district's obligation to competitively procure a construction contract from \$50,000 to a higher amount.

The Texas Education Code generally requires school districts to use an approved method of competitive procurement for the purchases of goods and services valued at \$50,000 or more in the aggregate for each 12-month period. Tex. Educ. Code § 44.031(a). A district cannot override the statutory amount through local policy. If the district follows local policy with a higher amount for competitive procurement rather than Texas Education Code section 44.031, it will violate state procurement law. TASB Legal Services recommends that districts not adopt policies that set an amount for competitive procurement higher than \$50,000.

- **LEGAL TIP:** Do not adopt a local policy setting an amount for competitive procurement higher than the statutory amount of \$50,000.

DEC(LOCAL)—Compensation and Benefits: Leaves and Absences

Local Leave Policy Contains Provisions Not Necessary in Board-Adopted Policy

- **COMMON ISSUE:** Local policy contains administrative details for administration of leave.

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Revisions recommended at Update 117 remove administrative details not required to be in board policy and that may be more appropriately addressed elsewhere, such as in the employee handbook. To support the removal of these administrative details, new language directs the superintendent to develop administrative regulations to implement the policy.

- **LEGAL TIP:** Board-adopted local policy should not include provisions suited for administrative regulations.

District with Sick Leave Pool or Bank Does Not Limit Reasons for Use to “Catastrophic” Illness or Injury

- **COMMON ISSUE:** Without limitations, the donor of leave to a pool or bank could owe taxes.

A district is not legally required to provide employees a sick leave pool or bank. If a district does offer such leave, it is recommended that the use be limited to “catastrophic” illness or injury. The IRS requires that donated leave programs be limited to mental or physical conditions that necessitate a prolonged absence from work and could result in substantial loss of income because an employee has exhausted all available paid leave. If the district allows leave for purposes other than catastrophic illness or injury, the employee who donates the leave may have to pay income tax on the donated leave. I.R.S. Priv. Ltr. Rul. 2007-20017 (May 18, 2007).

- **LEGAL TIP:** Local policy should include a definition of “catastrophic” illness or injury if the district provides a leave bank or pool.

Exceptions to Limitations on Duration of Discretionary Leave

- **COMMON ISSUE:** Local policy gives the superintendent discretion to make an exception to limits on the use of discretionary leave.

Local policy should not give administration the authority to make exceptions to the number of consecutive days an employee can be out on discretionary use if the board has determined a maximum in policy. The board has authority to adopt a policy governing employees’ use of state personal leave. Tex. Educ. Code § 22.003(a). The board may not, however, regulate the reasons for the leave. Allowing an administrator to determine if extenuating circumstances exist for purposes of consecutive leave days is taking the reasons for the employee’s leave request into consideration. The district could instead rely, for purposes of limiting the number of days used, on policy language that permits the employee’s supervisor to consider the effect of the employee’s absence on the educational program or district operations, as well as the availability of substitutes.

- **LEGAL TIP:** Do not allow administrators to make exceptions to the duration of discretionary leave.

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No Criteria for Award of Extended Sick Leave

- **COMMON ISSUE:** Local policy provides for extended sick leave but does not include criteria.

This policy does not set forth the criteria used to grant or deny extended sick leave. Without criteria in the policy, the district runs the risk of claims of discrimination. Federal and state laws prohibit employers from discriminating on the basis of disability or pregnancy in making leave decisions. For fair and consistent implementation, the district should formulate, and include in policy or regulations, some objective criteria on which to base such decisions.

- **LEGAL TIP:** Include reasons for use of extended sick leave in local policy.

Policy Includes Provisions Regarding Neutral Absence Control without Reference to ADA

- **COMMON ISSUE:** Local policy includes neutral absence control but does not reference reasonable accommodations under the Americans with Disabilities Act (ADA).

A local policy may provide that employees who fail to return to work after exhausting all available paid leave will be terminated. 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). However, if the employee is out on leave because of a disability, the Equal Employment Opportunity Commission (EEOC) advises that the employee's eligibility for reasonable accommodations, as required by the ADA, shall be considered before termination. EEOC, Employer Provided Leave and the Americans with Disabilities Act (May 9, 2016), eeoc.gov/eeoc/publications/ada-leave.cfm. If the district includes a neutral absence control provision in its local leave policy, it should acknowledge the employee's rights under the ADA.

- **LEGAL TIP:** Include a reference to additional leave as a reasonable accommodation if the district has a neutral absence control policy.

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.

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.

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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 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. 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.

It is vital that boards not adopt legal policies. Legal policies contain citations to the statutes, rules, and case law governing a particular topic. They are compiled by TASB Legal Services and Policy Service to provide the legal framework for key areas of district operations. Legal policies reflect current law and are updated by TASB as the laws change. Legal and local policies function differently, and it is imperative that only local policies should be acted upon when a board updates 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.

Explanatory Notes

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AIC(LEGAL) ACCOUNTABILITY: INTERVENTIONS AND SANCTIONS

Administrative Code provisions amended effective January 5, 2021, address program performance regarding certain special student populations. The rules address supervision and monitoring reviews and require the commissioner to assign districts an annual determination level based on performance of the special student populations.

BBC(LEGAL) BOARD MEMBERS: VACANCIES AND REMOVAL FROM OFFICE

We have streamlined the reference to CH(LEGAL) regarding board member removal for purchasing violations.

BBD(EXHIBIT) BOARD MEMBERS: TRAINING AND ORIENTATION

As approved by the State Board of Education in November 2020, the Framework for School Board Development has been extensively revised.

BJCE(LEGAL) SUPERINTENDENT: SUSPENSION/TERMINATION DURING CONTRACT

Changes to this legally referenced policy on suspension of the superintendent without pay and termination during the contract term were prompted by Administrative Code revisions effective January 11, 2021.

C(LEGAL) BUSINESS AND SUPPORT SERVICES

The C Section table of contents has been revised to rename CHE to Vendor Disclosures and Contracts.

CBB(LEGAL) STATE AND FEDERAL REVENUE SOURCES: FEDERAL

The federal Department of Education issued correcting amendments to the Uniform Guidance for Grants and Agreements, effective February 22, 2021, resulting in a change to the provisions on cooperative purchasing in this legally referenced policy. Citations have also been updated.

CH(LEGAL) PURCHASING AND ACQUISITION

Update 117 includes a reorganization of the purchasing and facilities construction legally referenced policies in the CH and CV series.

As part of the reorganization, we have:

- Added cross-references to other pertinent policy codes to eliminate duplicated material;
- Added existing provisions on site-based purchasing;
- Reordered and adjusted provisions for clarity and to better match statutory wording;
- Moved to CHE(LEGAL) provisions on required vendor disclosures and contract provisions and lobbying restrictions; and
- Moved detailed provisions on competitive bidding to CVA(LEGAL).

Provisions on purchasing recycled products were added from new Administrative Code rules, effective July 2, 2020.

CH(LOCAL) PURCHASING AND ACQUISITION

The major winter storms earlier this year caused extensive damage to many district facilities. Based on district requests for additional flexibility in such emergency circumstances, we recommend a new provision delegating authority to the superintendent to contract for the replacement, construction, or repair of equipment or facilities in the event of a catastrophe, emergency, or natural disaster affecting the district if

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Westwood ISD

emergency replacement, construction, or repair is necessary for the health and safety of district students and staff. The superintendent must report to the board any contracts made under the delegated authority at the next regular meeting.

The recommended text also clarifies that the delegation *does not* permit the superintendent to act under Education Code 44.031(h) to make purchases without following normal competitive purchasing requirements; the board must take action to waive any Chapter 44 provisions in accordance with law.

The recommended delegation provision is optional. Please carefully review the new text to ensure it aligns with the district's practices and contact the district's policy consultant if your district does not wish to add this provision or has other revisions.

TASB Legal Services' eSource article [Emergency Management for Texas Public Schools](#) provides additional information on purchasing in emergency situations.

The *Legal Issues in Update 117* memo describes common legal concerns and best practices specific to [this policy topic](#).

CHE(LEGAL) PURCHASING AND ACQUISITION: VENDOR DISCLOSURES AND CONTRACTS

This legally referenced policy has been reorganized to focus on required vendor disclosures and contract provisions. This material has been moved from CH(LEGAL).

In addition, we have:

- Included references to other pertinent codes and deleted material duplicated at other policy codes; and
- Reordered and adjusted provisions for clarity and to better match statutory wording.

CL(LEGAL) BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT

New Administrative Code rules, effective July 2, 2020, prompted revisions to provisions on recycling programs.

Provisions on pool sanitation and safety standards have been streamlined to refer to the relevant legal guidance.

CV(LEGAL) FACILITIES CONSTRUCTION

Update 117 includes a reorganization of the purchasing- and construction-related legally referenced policies in the CH and CV series.

As part of the reorganization, we have:

- Added cross-references to other pertinent policy codes to eliminate duplicated material; and
- Reordered and adjusted provisions for flow and to better match statutory wording.

CV(LOCAL) FACILITIES CONSTRUCTION

For ease of reference and to align with recommended changes at CH(LOCAL) on delegation to the superintendent for emergency contracting, Policy Service recommends adding a Note referring to CH(LOCAL) for those provisions.

The *Legal Issues in Update 117* memo describes common legal concerns and best practices specific to [this policy topic](#).

Explanatory Notes

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CVA(LEGAL)

FACILITIES CONSTRUCTION: COMPETITIVE BIDDING

Provisions on identical, competitive bids have been moved from CH(LEGAL). In addition, a provision on making bid evaluations public has been moved to this policy from CV(LEGAL). Other revisions are to delete material duplicated at other policy codes and adjust language for clarity and to better match statutory wording.

CVB(LEGAL)

FACILITIES CONSTRUCTION: COMPETITIVE SEALED PROPOSALS

A cross-reference has been added to procurement processes included at other policy codes, and duplicated material has been deleted. Other revisions are to adjust language for clarity and to better match statutory wording.

CVC(LEGAL)

FACILITIES CONSTRUCTION: CONSTRUCTION MANAGER-AGENT

Additional detail has been added regarding the construction manager-agent method. A cross-reference has been added to procurement processes included at other policy codes, and duplicated material has been deleted. Other revisions are to adjust language for clarity and to better match statutory wording.

CVD(LEGAL)

FACILITIES CONSTRUCTION: CONSTRUCTION MANAGER-AT-RISK

Additional detail has been added regarding the construction manager-at-risk method. A cross-reference has been added to procurement processes included at other policy codes, and duplicated material has been deleted. Other revisions are to adjust language for clarity and to better match statutory wording.

CVE(LEGAL)

FACILITIES CONSTRUCTION: DESIGN-BUILD

A cross-reference has been added to procurement processes included at other policy codes, duplicated material has been deleted, and provisions have been reordered for flow. Other revisions are to adjust language for clarity and to better match statutory wording.

CVF(LEGAL)

FACILITIES CONSTRUCTION: JOB ORDER CONTRACTS

A cross-reference has been added to procurement processes included at other policy codes, duplicated material has been deleted, and provisions have been reordered for flow. Other revisions are to adjust language for clarity and to better match statutory wording.

DEC(LOCAL)

COMPENSATION AND BENEFITS: LEAVES AND ABSENCES

The events of the past year have highlighted the need for additional flexibility regarding administration of leave. TASB Policy, Legal, and HR Services collaborated on the recommended revisions to this policy, which remove administrative details not required to be in board policy and that may be more appropriately addressed elsewhere, such as in the employee handbook.

To support the removal of these administrative details, a new paragraph directs the superintendent to develop administrative regulations to implement the policy. [Remember that BJA(LOCAL) permits the superintendent to delegate this responsibility as appropriate.] In addition, TASB HR Services has:

- Created a corresponding [Framework for Developing Leaves and Absences Procedures](#), with prompts and placeholders for administrative decisions; and
- Revised the 2021–22 *Model Employee Handbook* to address administrative provisions removed from the policy.

Other changes include:

- Updating the definition of *catastrophic illness or injury* to clarify how it applies to the use of leave from the district's sick leave pool.

Explanatory Notes

TASB Localized Policy Manual Update 117

Westwood ISD

- Adding a definition of *school year* that aligns with terminology in the TASB sample contracts and that provides context for references to the term elsewhere in the policy.
- Relocating provisions on concurrent use of leave and compensatory time to the sections addressing temporary disability leave and family and medical leave.
- Streamlining of family and medical leave provisions to eliminate information not necessary in board-adopted policy.
- Adding a clear statement to reflect that the district does not permit paid leave offset in conjunction with workers' compensation benefits.
- Revising terminology from *reimbursement* to *payment* for unused leave to reflect that employees are receiving payment annually for unused leave days.

New recommended provisions on state personal leave clarify that the district will also consider how the duration of the requested absence affects the educational program and district operations.

The *Legal Issues in Update 117* memo describes common legal concerns and best practices specific to [this policy topic](#).

EHAA(LLEGAL)

BASIC INSTRUCTIONAL PROGRAM: REQUIRED INSTRUCTION (ALL LEVELS)

New Administrative Code rules address the requirement for districts to provide instruction in positive character traits, which can be met through a stand-alone course or by integrating the TEKS into other courses. The rules address the frequency of instruction by grade bands and are effective for the 2021–22 school year.

EHBA(LLEGAL)

SPECIAL PROGRAMS: SPECIAL EDUCATION

Revised Administrative Code rules, effective March 14, 2021, address various special education provisions and:

- Provide more detail on instructional arrangements;
- Include a definition of *regular school day* for the purpose of determining the instructional arrangement; and
- Update citations to funding statutes.

EHBA(LLEGAL)

SPECIAL EDUCATION: IDENTIFICATION, EVALUATION, AND ELIGIBILITY

Provisions on a district's obligation to refer for evaluation and the definition of a *child with a disability* have been updated based on revised Administrative Code rules, effective March 14, 2021. Other changes are to better reflect statute.

EHBAB(LLEGAL)

SPECIAL EDUCATION: ARD COMMITTEE AND INDIVIDUALIZED EDUCATION PROGRAM

As a result of revised Administrative Code rules effective March 14, 2021, we have updated text regarding establishment of the admission, review, and dismissal (ARD) committee and added a provision addressing a district's overall responsibility for all of the functions of the IEP team and ARD committee. Citations have also been updated.

Explanatory Notes

TASB Localized Policy Manual Update 117

Westwood ISD

EHBAC(LLEGAL) SPECIAL EDUCATION: STUDENTS IN NONDISTRICT PLACEMENT

From revised Administrative Code rules effective March 14, 2021, we have added a provision requiring the district to notify TEA within 30 calendar days of an ARD committee's decision to place a student in a residential education program.

EHBAD(LLEGAL) SPECIAL EDUCATION: TRANSITION SERVICES

Revised Administrative Code rules, effective March 14, 2021, prompted a revision to the graduation provisions and updates to cites throughout this legally referenced policy.

EHBC(LLEGAL) SPECIAL PROGRAMS: COMPENSATORY/ACCELERATED SERVICES

Revisions regarding approval of an optional flexible school day program are from revised Administrative Code rules, effective December 6, 2020.

EIF(LLEGAL) ACADEMIC ACHIEVEMENT: GRADUATION

Details have been added on the graduation of students receiving special education services who entered grade nine after the 2014–15 school year. The changes come from revised Administrative Code rules effective March 14, 2021.

In addition, we have replaced detailed provisions on graduation of students receiving special education services who entered grade nine before the 2014–15 school year with a reference to the relevant Administrative Code provision. Citations have been updated throughout.

EKB(LLEGAL) TESTING PROGRAMS: STATE ASSESSMENT

In accordance with House Bill 3906 (86th Legislative Session) and effective September 1, 2021, the reference to the separate writing assessment in grades 4 and 7 has been removed.

EL(LLEGAL) CAMPUS OR PROGRAM CHARTERS

We have added provisions that a district is entitled to additional state aid if the district was under contract during the 2017–18 school year or is under renewal of such a contract to jointly operate a campus or campus program under Education Code 11.157 (Contracts for Educational Services). Details may be found in revised Administrative Code rules, effective March 30, 2021.

FFAC(LLEGAL) WELLNESS AND HEALTH SERVICES: MEDICAL TREATMENT

New Administrative Code rules, effective February 18, 2021, address maintenance and administration of unassigned asthma medication for districts that choose to implement such a program. Contact your policy consultant if your district has a program but lacks local policy provisions.

See FFAC in the [TASB Regulations Resource Manual](#).



Policy Reference Manual Update 117

Update 117 revisions to legal policies are described in the update Explanatory Notes.

The *Policy Reference Manual* is a comprehensive collection of federal and state statutes and regulations, case law, attorney general opinions, and commissioner's decisions affecting Texas school districts. As such, it is an excellent reference document that recites a broad array of legal requirements, many of which apply to all districts, others to only a certain few. For this reason, these (LEGAL) policies are not suitable for incorporation in localized policy manuals.

PLEASE NOTE: This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional adviser. Consult with your attorney or professional adviser to apply these principles to specific fact situations.

If you have any questions concerning this update or the *TASB Policy Reference Manual*, please call 800-580-7529 or 512-467-0222.

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Instruction Sheet

TASB Policy Reference Manual Update 117

Policy Reference Manual

| Code | Type | Action To Be Taken | Note |
|-------------|-------------|---------------------------|---------------------------|
| AIC | (LEGAL) | Replace policy | Revised policy |
| BBC | (LEGAL) | Replace policy | Revised policy |
| BBD | (EXHIBIT) | Replace exhibit | Revised exhibit |
| BJCE | (LEGAL) | Replace policy | Revised policy |
| C | (LEGAL) | Replace table of contents | Revised table of contents |
| CBB | (LEGAL) | Replace policy | Revised policy |
| CH | (LEGAL) | Replace policy | Revised policy |
| CHE | (LEGAL) | Replace policy | Revised policy |
| CL | (LEGAL) | Replace policy | Revised policy |
| CV | (LEGAL) | Replace policy | Revised policy |
| CVA | (LEGAL) | Replace policy | Revised policy |
| CVB | (LEGAL) | Replace policy | Revised policy |
| CVC | (LEGAL) | Replace policy | Revised policy |
| CVD | (LEGAL) | Replace policy | Revised policy |
| CVE | (LEGAL) | Replace policy | Revised policy |
| CVF | (LEGAL) | Replace policy | Revised policy |
| EHAA | (LEGAL) | Replace policy | Revised policy |
| EHBA | (LEGAL) | Replace policy | Revised policy |
| EHBAA | (LEGAL) | Replace policy | Revised policy |
| EHBAB | (LEGAL) | Replace policy | Revised policy |
| EHBAC | (LEGAL) | Replace policy | Revised policy |
| EHBAD | (LEGAL) | Replace policy | Revised policy |
| EHBC | (LEGAL) | Replace policy | Revised policy |
| EIF | (LEGAL) | Replace policy | Revised policy |
| EKB | (LEGAL) | Replace policy | Revised policy |
| EL | (LEGAL) | Replace policy | Revised policy |
| FFAC | (LEGAL) | Replace policy | Revised policy |

Explanatory Notes

TASB Policy Reference Manual Update 117

Policy Reference Manual

AIC(LEGAL) ACCOUNTABILITY: INTERVENTIONS AND SANCTIONS

Administrative Code provisions amended effective January 5, 2021, address program performance regarding certain special student populations. The rules address supervision and monitoring reviews and require the commissioner to assign districts an annual determination level based on performance of the special student populations.

BBC(LEGAL) BOARD MEMBERS: VACANCIES AND REMOVAL FROM OFFICE

We have streamlined the reference to CH(LEGAL) regarding board member removal for purchasing violations.

BBD(EXHIBIT) BOARD MEMBERS: TRAINING AND ORIENTATION

As approved by the State Board of Education in November 2020, the Framework for School Board Development has been extensively revised.

BJCE(LEGAL) SUPERINTENDENT: SUSPENSION/TERMINATION DURING CONTRACT

Changes to this legally referenced policy on suspension of the superintendent without pay and termination during the contract term were prompted by Administrative Code revisions effective January 11, 2021.

C(LEGAL) BUSINESS AND SUPPORT SERVICES

The C Section table of contents has been revised to rename CHE to Vendor Disclosures and Contracts.

CBB(LEGAL) STATE AND FEDERAL REVENUE SOURCES: FEDERAL

The federal Department of Education issued correcting amendments to the Uniform Guidance for Grants and Agreements, effective February 22, 2021, resulting in a change to the provisions on cooperative purchasing in this legally referenced policy. Citations have also been updated.

CH(LEGAL) PURCHASING AND ACQUISITION

Update 117 includes a reorganization of the purchasing and facilities construction legally referenced policies in the CH and CV series.

As part of the reorganization, we have:

- Added cross-references to other pertinent policy codes to eliminate duplicated material;
- Added existing provisions on site-based purchasing;
- Reordered and adjusted provisions for clarity and to better match statutory wording;
- Moved to CHE(LEGAL) provisions on required vendor disclosures and contract provisions and lobbying restrictions; and
- Moved detailed provisions on competitive bidding to CVA(LEGAL).

Provisions on purchasing recycled products were added from new Administrative Code rules, effective July 2, 2020.

CHE(LEGAL) PURCHASING AND ACQUISITION: VENDOR DISCLOSURES AND CONTRACTS

This legally referenced policy has been reorganized to focus on required vendor disclosures and contract provisions. This material has been moved from CH(LEGAL).

Explanatory Notes

TASB Policy Reference Manual Update 117

Policy Reference Manual

In addition, we have:

- Included references to other pertinent codes and deleted material duplicated at other policy codes; and
- Reordered and adjusted provisions for clarity and to better match statutory wording.

CL(LEGAL) BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT

New Administrative Code rules, effective July 2, 2020, prompted revisions to provisions on recycling programs.

Provisions on pool sanitation and safety standards have been streamlined to refer to the relevant legal guidance.

CV(LEGAL) FACILITIES CONSTRUCTION

Update 117 includes a reorganization of the purchasing- and construction-related legally referenced policies in the CH and CV series.

As part of the reorganization, we have:

- Added cross-references to other pertinent policy codes to eliminate duplicated material; and
- Reordered and adjusted provisions for flow and to better match statutory wording.

CVA(LEGAL) FACILITIES CONSTRUCTION: COMPETITIVE BIDDING

Provisions on identical, competitive bids have been moved from CH(LEGAL). In addition, a provision on making bid evaluations public has been moved to this policy from CV(LEGAL). Other revisions are to delete material duplicated at other policy codes and adjust language for clarity and to better match statutory wording.

CVB(LEGAL) FACILITIES CONSTRUCTION: COMPETITIVE SEALED PROPOSALS

A cross-reference has been added to procurement processes included at other policy codes, and duplicated material has been deleted. Other revisions are to adjust language for clarity and to better match statutory wording.

CVC(LEGAL) FACILITIES CONSTRUCTION: CONSTRUCTION MANAGER-AGENT

Additional detail has been added regarding the construction manager-agent method. A cross-reference has been added to procurement processes included at other policy codes, and duplicated material has been deleted. Other revisions are to adjust language for clarity and to better match statutory wording.

CVD(LEGAL) FACILITIES CONSTRUCTION: CONSTRUCTION MANAGER-AT-RISK

Additional detail has been added regarding the construction manager-at-risk method. A cross-reference has been added to procurement processes included at other policy codes, and duplicated material has been deleted. Other revisions are to adjust language for clarity and to better match statutory wording.

CVE(LEGAL) FACILITIES CONSTRUCTION: DESIGN-BUILD

A cross-reference has been added to procurement processes included at other policy codes, duplicated material has been deleted, and provisions have been reordered for flow. Other revisions are to adjust language for clarity and to better match statutory wording.

Explanatory Notes

TASB Policy Reference Manual Update 117

Policy Reference Manual

CVF(LLEGAL) FACILITIES CONSTRUCTION: JOB ORDER CONTRACTS

A cross-reference has been added to procurement processes included at other policy codes, duplicated material has been deleted, and provisions have been reordered for flow. Other revisions are to adjust language for clarity and to better match statutory wording.

EHAA(LLEGAL) BASIC INSTRUCTIONAL PROGRAM: REQUIRED INSTRUCTION (ALL LEVELS)

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Explanatory Notes

TASB Policy Reference Manual Update 117

Policy Reference Manual

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**Interventions and
Sanctions for School
Districts**

Grounds for
Commissioner
Action

The commissioner of education shall take any of the actions authorized by Education Code, Chapter 39A, Subchapter A, to the extent the commissioner determines necessary if:

1. A district does not satisfy:
 - a. The accreditation criteria under Education Code 39.052 [see AIA];
 - b. The academic performance standards under Education Code 39.053 or 39.054 [see AIA]; or
 - c. Any financial accountability standard as determined by commissioner rule [see CFA]; or
2. The commissioner considers the action to be appropriate on the basis of a special accreditation investigation under Education Code 39.057.

Education Code 39A.001

*Authorized
Commissioner
Actions*

If a district is subject to commissioner action, the commissioner may:

1. Issue public notice of the deficiency to the board;
2. Order a hearing to be conducted by the board to notify the public of:
 - a. The insufficient performance;
 - b. The improvements in performance expected by the Texas Education Agency (TEA); and
 - c. The interventions and sanctions that may be imposed if the performance does not improve;
3. Order the preparation of a student achievement improvement plan that addresses each academic achievement indicator under Education Code 39.053(c) for which the district's performance is insufficient, the submission of the plan to the commissioner for approval, and the implementation of the plan;
4. Order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board and the district's superintendent shall appear and explain the district's low performance, lack of improvement, and plans for improvement;
5. Arrange a monitoring review of the district;
6. Appoint a TEA monitor to participate in and report to TEA on the activities of the board or superintendent;

7. Appoint a conservator to oversee the operations of the district;
8. Appoint a management team to direct the operations of the district in areas of insufficient performance or require the district to obtain certain services under a contract with another person; or
9. Authorize the district to enter into a memorandum of understanding with an institution of higher education that provides for the assistance of the institution of higher education in improving the district's performance.

Education Code 39A.002

Regardless of whether the commissioner lowers a district's status or rating, the commissioner may take action under Education Code Chapters 39 and 39A or 19 Administrative Code 97.1057 if the commissioner determines that the action is necessary to improve any area of performance by the district or campus.

Subject to 19 Administrative Code 97.1057(h)–(k), once the commissioner takes action under 19 Administrative Code Subchapter EE (accreditation status, standards, and sanctions), the commissioner may impose on the district or campus any other sanction under Education Code Chapter 39 or 39A, or Subchapter EE, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in 19 Administrative Code 97.1053.

19 TAC 97.1057(c), (e)

In making a determination to impose district and campus accreditation sanctions under 19 Administrative Code Chapter 97, Subchapter EE, the commissioner shall meet the requirements of 19 Administrative Code 97.1059. *19 TAC 97.1059*

Conservator or
Management Team

The commissioner shall clearly define the powers and duties of a conservator or management team appointed to oversee the operations of a district.

At least every 90 days, the commissioner shall review the need for the conservator or management team and shall remove the conservator or management team unless the commissioner determines that continued appointment is necessary for effective governance of the district or delivery of instructional services.

A conservator or management team, if directed by the commissioner, shall prepare a plan for the implementation of the appointment of a board of managers or the revocation of accreditation.

The conservator or management team may:

1. Direct an action to be taken by the principal of a campus, the superintendent of the district, or the board; and
2. Approve or disapprove any action of the principal of a campus, the superintendent of the district, or the board.

The conservator or management team may not:

1. Take any action concerning a district election, including ordering or canceling an election or altering the date of or the polling places for an election;
2. Change the number of or method of selecting the board;
3. Set a tax rate for the district; and
4. Adopt a budget for the district that provides for spending a different amount, exclusive of required debt service, from that previously adopted by the board.

Education Code 39A.003

Regardless of whether a district has satisfied the accreditation criteria, if for two consecutive school years, including the current school year, a district has had a conservator or management team assigned, the commissioner may appoint a board of managers, a majority of whom must be residents of the district, to exercise the powers and duties of the board of trustees. For purposes of this subsection, a school year begins on the first day of instruction and includes any portion of the school year. *19 TAC 97.1057(d); Education Code 39A.006(b)*

Board of Managers

The commissioner may appoint a board of managers to exercise the powers and duties of a district's board if the district is subject to commissioner action and:

1. Has a current accreditation status of accredited-warned or accredited-probation;
2. Fails to satisfy any standard under Education Code 39.054(e); or
3. Fails to satisfy financial accountability standards as determined by commissioner rule.

Education Code 39A.004

Revocation of
Accreditation

The commissioner may revoke the accreditation of a district if the district is subject to commissioner action, and for two consecutive school years, including the current school year, the district has:

1. Received an accreditation status of accredited-warned or accredited-probation;
2. Failed to satisfy any standard under Education Code 39.054(e); or
3. Failed to satisfy financial accountability standards as determined by commissioner rule.

In addition to revoking a district's accreditation, the commissioner may:

1. Order closure of the district and annex the district to one or more adjoining districts under Education Code 13.054; or
2. In the case of a home-rule school district, order closure of all programs operated under the district's charter.

Education Code 39A.005

Intervention to
Improve High
School Completion
Rate

If a district is subject to commissioner action and the district has failed to satisfy any standard under Education Code 39.054(e) because of the district's dropout rates, the commissioner may impose sanctions against a district designed to improve high school completion rates, including:

1. Ordering the development of a dropout prevention plan for approval by the commissioner;
2. Restructuring the district or appropriate campuses to improve identification of and service to students who are at risk of dropping out of school, as defined by Education Code 29.081;
3. Ordering lower student-to-counselor ratios on campuses with high dropout rates; and
4. Ordering the use of any other intervention strategy effective in reducing dropout rates, including mentor programs and flexible class scheduling.

Education Code 39A.007

**Campus Intervention
Team and Targeted
Improvement Plan**

Actions Based on
Campus
Performance

If the performance of a campus is below any standard under Education Code 39.054(e), the commissioner shall:

1. Take actions, to the extent the commissioner determines necessary, as provided by Education Code, Chapter 39A; and
2. Assign a campus intervention team.

To the extent the commissioner determines necessary, the commissioner may:

1. Order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board, the superintendent, and the campus principal shall appear and explain the campus's low performance, lack of improvement, and plans for improvement; or
2. Establish a school community partnership team composed of members of the campus-level planning and decision-making committee and additional community representatives as determined appropriate by the commissioner.

Education Code 39A.051

Texas
Accountability
Intervention System

If a campus's performance is below any standard under Education Code 39.054(e), the campus shall engage in interventions as described by TEA. The commissioner shall assign members to a campus intervention team as outlined in 19 Administrative Code 97.1063 and Education Code 39A.052. The campus shall establish a campus leadership team (CLT) that includes the campus principal and other campus leaders responsible for the development, implementation, and monitoring of the targeted improvement plan.

If a campus is assigned an unacceptable rating under Education Code 39.054(e):

1. For a second consecutive year, the campus must engage in the processes outlined in this provision, and the campus must develop a campus turnaround plan to be approved by the commissioner.
2. For a third or fourth consecutive year, the campus must engage in the processes outlined in this provision, and the campus must implement the commissioner-approved campus turnaround plan as described in 19 Administrative Code 97.1064.
3. For a fifth consecutive year, the commissioner shall order the appointment of a board of managers to govern the district or the closure of the campus.

Based on a campus's progress toward improvement, the commissioner may order a hearing if a campus's performance is below any standard under Education Code 39.054(e).

Interventions and sanctions listed under this provision begin upon release of preliminary ratings and may be adjusted based on final accountability ratings.

19 TAC 97.1061(a)–(c), (e)–(i)

Campus
Intervention Team

The campus intervention team shall follow the requirements of 19 Administrative Code 97.1061 and Education Code 39.106.

A campus intervention team assigned by the commissioner may include teachers, principals, other educational professionals, and superintendents recognized for excellence in their roles and appointed by the commissioner to serve as members of a team.

Education Code 39A.052

A campus intervention team must include a district coordinator of school improvement (DCSI) and the campus principal's direct supervisor, if the DCSI is not the campus principal's direct supervisor. The DCSI must submit qualifications to TEA for approval.

An education professional, approved through an application either by TEA or TEA's technical assistance provider, who is not an employee of the campus or district, shall assist with the needs assessment.

19 TAC 97.1063(b)–(c)

*On-Site Needs
Assessment*

A campus intervention team shall:

1. Conduct, with the involvement and advice of the school community partnership team, if applicable:
 - a. If the commissioner determines necessary, a comprehensive on-site needs assessment; or
 - b. A targeted on-site needs assessment relevant to an area of insufficient performance of the campus; and
2. Recommend appropriate actions as provided by Education Code 39A.054.

An on-site needs assessment must determine the factors resulting in the campus's low performance and lack of progress, including the contributing education-related factors.

In conducting a comprehensive on-site needs assessment, the campus intervention team shall use each of the guidelines and procedures at Education Code 39A.053(c) and 19 Administrative Code 97.1061(d).

In conducting a targeted on-site needs assessment, the campus intervention team shall use the appropriate guidelines and procedures described above relevant to each area of insufficient performance.

Education Code 39A.053

- Recommendations
- On completing the on-site needs assessment, the campus intervention team shall, with the involvement and advice of the school community partnership team, if applicable, recommend actions relating to any area of insufficient performance, including:
1. Reallocation of resources;
 2. Technical assistance;
 3. Changes in school procedures or operations;
 4. Staff development for instructional and administrative staff;
 5. Intervention for individual administrators or teachers;
 6. Waivers from state statutes or rules;
 7. Teacher recruitment or retention strategies and incentives provided by the district to attract and retain appropriately certified and experienced teachers; or
 8. Other actions the campus intervention team considers appropriate.

Education Code 39A.054

*Targeted
Improvement
Plan*

- In addition to the duties relating to the on-site needs assessment, the campus intervention team shall:
1. Assist the campus in developing a targeted improvement plan;
 2. Conduct a public meeting at the campus with the campus principal, the members of the campus-level planning and decision-making committee, parents of students attending the campus, and community members residing in the district to review the campus performance rating and solicit input for the development of the targeted improvement plan [see Notice of Public Meeting, below];
 3. Assist the campus in submitting the targeted improvement plan to the board for approval and presenting the plan in a public hearing [see Public Hearing, below]; and
 4. Assist the commissioner in monitoring the progress of the campus in executing the targeted improvement plan.

Education Code 39A.055; 19 TAC 97.1061(d)(3)–(4)

Notice of Public
Meeting

The campus intervention team must provide written notice of the public meeting to the parents of students attending the campus and post notice of the meeting on the campus's internet website.

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| | <p>The notice must include the date, time, and place of the meeting. <i>Education Code 39A.056</i></p> <p>The public must be notified of the meeting 15 days prior to the meeting by way of the district and campus website, local newspapers, or other media that reach the general public, and the parent liaison, if present on the campus. <i>19 TAC 97.1061(d)(3)(A)(2)(i)</i></p> |
| Public Hearing | <p>After a targeted improvement plan or an updated targeted improvement plan is submitted to the board, the board shall conduct a hearing to:</p> <ol style="list-style-type: none">1. Notify the public of:<ol style="list-style-type: none">a. The insufficient performance of the campus;b. The improvements in performance expected by TEA; andc. The intervention measures or sanctions that may be imposed under Education Code, Chapter 39A if the performance does not improve within a designated period; and2. Solicit public comment on the targeted improvement plan or updated targeted improvement plan. <p>The board must post the targeted improvement plan on the district's internet website before the hearing.</p> <p>The board may conduct one hearing relating to one or more campuses subject to a targeted improvement plan or an updated targeted improvement plan.</p> <p><i>Education Code 39A.057</i></p> |
| Submission to Commissioner | <p>The board shall submit the targeted improvement plan or updated targeted improvement plan to the commissioner for approval. The campus intervention team shall assist the campus in submitting the targeted improvement plan to the commissioner. <i>Education Code 39A.058</i></p> |
| Executing Plan | <p>In executing the targeted improvement plan, the campus intervention team shall, if appropriate:</p> <ol style="list-style-type: none">1. Assist the campus in implementing research-based practices for curriculum development and classroom instruction, including bilingual education and special education programs, and financial management; |

2. Provide research-based technical assistance, including data analysis, academic deficiency identification, intervention implementation, and budget analysis, to strengthen and improve the instructional programs at the campus; and
3. Require the district to develop a teacher recruitment and retention plan to address the qualifications and retention of the teachers at the campus.

Education Code 39A.059

*Continuing Duties
of the Campus
Intervention
Team*

For each year a campus is assigned an unacceptable performance rating, the campus intervention team shall:

1. Assist in updating the targeted improvement plan to identify and analyze areas of growth and areas that require improvement; and
2. Submit each updated targeted improvement plan to the board.

Education Code 39A.060

Needs Improvement
Rating

If a district or campus is assigned an overall or domain performance rating of D:

1. The commissioner shall order the district or campus to develop and implement a targeted improvement plan approved by the board; and
2. The interventions and sanctions provided by Education Code, Chapter 39A based on failure to satisfy performance standards under Education Code 39.054(e) apply to the district or campus only as provided below.

The interventions and sanctions based on failure to satisfy performance standards under Education Code 39.054(e) apply to a district or campus ordered to develop and implement a targeted improvement plan if the district or campus is assigned:

1. An overall or domain performance rating of F; or
2. An overall performance rating of D as provided below.

If a district or campus is assigned an overall performance rating of D for a school year after the district or campus is ordered to develop and implement a targeted improvement plan, the commissioner shall implement interventions and sanctions that apply to an unacceptable campus and those interventions and sanctions shall

continue for each consecutive school year thereafter in which the campus is assigned an overall performance rating of D.

Education Code 39A.0545

Campus Planning
and Site-Based
Decision-Making

The commissioner may authorize a school community partnership team established under Education Code 39A.051 to supersede the authority of and satisfy the requirements of establishing and maintaining a campus-level planning and decision-making committee.

The commissioner may authorize a targeted improvement plan or an updated targeted improvement plan to supersede the provisions of and satisfy the requirements of developing, reviewing, and revising a campus improvement plan.

Education Code 39A.061

Submission of
Campus
Improvement Plan

If the performance of a campus satisfies performance standards under Education Code 39.054(e) for the current school year but would not satisfy the performance standards if the standards to be used for the following school year were applied to the current school year, on the request of the commissioner, the campus-level planning and decision-making committee shall revise and submit to the commissioner the portions of the campus improvement plan that are relevant to those areas for which the campus would not satisfy performance standards. The revised portions of the improvement plan must be submitted in an electronic format. *Education Code 39A.062*

Compliance
Through Federal
Accountability

Notwithstanding the provisions of Education Code Chapter 39A, if the commissioner determines that a campus subject to interventions or sanctions has implemented substantially similar intervention measures under federal accountability requirements, the commissioner may accept the substantially similar intervention measures as measures in compliance with Education Code Chapter 39A. *Education Code 39A.063*

**Campus Turnaround
Plan**

If a campus has been identified as unacceptable for two consecutive school years, the commissioner shall order the campus to prepare and submit a campus turnaround plan.

Updated Targeted
Improvement Plan

A campus intervention team shall assist the campus in:

1. Developing an updated targeted improvement plan, including a campus turnaround plan to be implemented by the campus;
2. Submitting the updated targeted improvement plan to the board for approval and presenting the plan in a public hearing as provided by Education Code 39A.057;

3. Obtaining approval of the updated plan from the commissioner; and
4. Executing the updated plan on approval by the commissioner.

The updated targeted improvement plan submitted to the board must include all plans and details that are required to execute the campus turnaround plan without any additional action or approval by the board.

Education Code 39A.101

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| Public Notice | Within 60 days of receiving a campus's preliminary accountability rating, the district must notify parents, community members, and stakeholders that the campus received an unacceptable rating for two consecutive years and request assistance in developing the campus turnaround plan in accordance with 19 Administrative Code 97.1064. <i>19 TAC 97.1064(d)</i> |
| Submission and Approval | Upon approval of the board, the district must submit the campus turnaround plan electronically to TEA by March 1 unless otherwise specified. Not later than June 15 of each year, the commissioner must either approve or reject any campus turnaround plan prepared and submitted by a district. <i>19 TAC 97.1064(g)–(h); Education Code 39A.103–.104</i> |
| Implementation | <p>A campus may implement, modify, or withdraw its campus turnaround plan with board approval if the campus receives an academically acceptable rating for the school year following the development of the campus turnaround plan.</p> <p>A campus that has received an unacceptable rating for the school year following the development of the campus turnaround plan must implement its commissioner-approved campus turnaround plan with fidelity until the campus operates for two consecutive school years without an unacceptable rating.</p> <p>The commissioner may appoint a monitor, conservator, management team, or board of managers for a school district that has a campus that has been ordered to implement an updated targeted improvement plan. The commissioner may order any of the interventions as necessary to ensure district-level support for the low-performing campus and the implementation of the updated targeted improvement plan. The commissioner may make the appointment at any time during which the campus is required to implement the updated targeted improvement plan.</p> <p><i>19 TAC 97.1064(j)–(k)</i></p> |
| Required Contents | A campus turnaround plan must include: |

1. Details on the method for restructuring, reforming, or reconstituting the campus;
2. A detailed description of the academic programs to be offered at the campus, including:
 - a. Instructional methods;
 - b. Length of school day and school year;
 - c. Academic credit and promotion criteria; and
 - d. Programs to serve special student populations;
3. If a district charter is to be granted for the campus under Education Code 12.0522:
 - a. The term of the charter; and
 - b. Information on the implementation of the charter;
4. Written comments from:
 - a. The campus-level committee established under Education Code 11.251, if applicable;
 - b. Parents; and
 - c. Teachers at the campus;
5. A detailed description of the budget, staffing, and financial resources required to implement the plan, including any supplemental resources to be provided by the district or other identified sources; and
6. A detailed description for developing and supporting the oversight of academic achievement and student performance by the board of trustees under Education Code 11.1515.

Education Code 39A.105(a) [Acts of the 85th Legislative Session, Senate Bill 1566, amended former Education Code 39.107(b-1) to include the information provided at Subsection (6)]

ACE Turnaround
Plan

A campus may submit an accelerated campus excellence (ACE) turnaround plan. The plan must provide:

1. The assignment of a principal to the campus who has demonstrated a history of improvement in student academic growth at campuses in which the principal has previously worked;
2. That the principal has final authority over personnel decisions at the campus;

3. That at least 60 percent of the classroom teachers assigned to the campus be teachers who demonstrated instructional effectiveness during the previous school year, with instructional effectiveness determined by:
 - a. For a teacher who taught in the district during the previous school year:
 - (1) The teacher's impact on student growth as determined using a locally developed value-added model that measures student performance on at least one assessment selected by the district; and
 - (2) An evaluation of the teacher based on classroom observation; and
 - b. For a teacher who did not teach in the district during the previous school year, data and other evidence indicating that if the teacher had taught in the district during the previous school year, the teacher would have performed in the top half of teachers in the district;
4. A detailed description of the employment and compensation structures for the principal and classroom teachers, which must include significant incentives for a high-performing principal or teacher to remain at the campus and a three-year commitment by the district to continue incentives for the principal and teachers;
5. Policies and procedures for the implementation of best practices at the campus, including:
 - a. Data-driven instructional practices;
 - b. A system of observation of and feedback for classroom teachers;
 - c. Positive student culture on the campus;
 - d. Family and community engagement, including partnerships with parent and community groups;
 - e. Extended learning opportunities for students, which may include service or workforce learning opportunities; and
 - f. Providing student services before or after the instructional day that improve student performance, which may include tutoring, extracurricular activities, counseling services, and offering breakfast, lunch, and dinner to all students at the campus; and

6. Assistance by a third-party provider that is approved by the commissioner in the development and implementation of the district's plan.

Education Code 39A.105(b)

Implementing
Entities

A campus ordered to prepare a campus turnaround plan shall implement the updated targeted improvement plan as approved by the commissioner.

The commissioner may appoint a monitor, conservator, management team, or board of managers to the district to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan.

In making appointments, the commissioner shall consider individuals who have demonstrated success in managing campuses with student populations similar to the campus at which the individual appointed will serve.

Education Code 39A.102, .108

Effective Date

A campus turnaround plan must take effect not later than the school year following the third consecutive school year that the campus has received an unacceptable performance rating. *Education Code 39A.106*

Commissioner
Approval or
Rejection

Not later than June 15 of each year, the commissioner shall, in writing, either approve or reject any campus turnaround plan prepared and submitted to the commissioner by a district. If the commissioner rejects a campus turnaround plan, the commissioner must also send the district an outline of the specific concerns regarding the turnaround plan that resulted in the rejection. *Education Code 39A.107(a-1)*

If the commissioner rejects a campus turnaround plan, the district must create a modified plan with assistance from TEA staff and submit the modified plan to the commissioner for approval not later than the 60th day after the date the commissioner rejects the campus turnaround plan. The commissioner shall notify the district in writing of the commissioner's decision regarding the modified plan not later than the 15th day after the date the commissioner receives the modified plan. *Education Code 39A.107(a-2)*

The commissioner may approve a campus turnaround plan only if the commissioner determines that the campus will satisfy all student performance standards required under Education Code 39.054(e) not later than the second year the campus receives a performance rating following the implementation of the campus turnaround plan.

Education Code 12.0522(b) does not apply to a district charter approved by the commissioner. An approved district charter may be renewed or continue in effect after the campus is no longer subject to the commissioner's order under Education Code 39A.101.

If the commissioner does not approve a campus turnaround plan, the commissioner shall order:

1. Appointment of a board of managers to govern the district;
2. Alternative management of the campus; or
3. Closure of the campus.

Education Code 39A.107; 19 TAC 97.1065

Implementation Following approval of a campus turnaround plan by the commissioner, the district, in consultation with the campus intervention team, may take any actions needed to prepare for the implementation of the plan. *Education Code 39A.108*

Assistance and Partnerships A district may:

1. Request that a regional education service center provide assistance in the development and implementation of a campus turnaround plan; or
2. Partner with an institution of higher education to develop and implement a campus turnaround plan.

Education Code 39A.109

Change in Campus Performance Rating If a campus for which a campus turnaround plan has been ordered receives an acceptable performance rating for the school year following the order, the board may:

1. Implement the campus turnaround plan;
2. Implement a modified version of the campus turnaround plan; or
3. Withdraw the campus turnaround plan.

A district required to implement a campus turnaround plan may modify the plan if the campus receives an acceptable performance rating for two consecutive school years following implementation of the plan.

Education Code 39A.110

Continued
Unacceptable
Performance Rating

If a campus is considered to have an unacceptable performance rating for three consecutive school years after the campus is ordered to submit a campus turnaround plan, the commissioner shall order:

1. Appointment of a board of managers to govern the district; or
2. Closure of the campus.

Education Code 39A.111; 19 TAC 97.1065(a)(2)

*Parent Petition
for Action*

"Parent" means the parent who is indicated on the student registration form at that campus and the signature of only one parent of a student is required.

If the commissioner is presented, in the time and manner specified by commissioner rule, with a written petition signed by the parents of a majority of the students enrolled at a campus with an unacceptable performance rating for three consecutive school years, specifying an authorized action that the parents request the commissioner to order, the commissioner shall order the specific action requested.

If the board presents to the commissioner, in the time and manner specified by commissioner rule, a written request that the commissioner order specific authorized action other than the specific action requested in the parents' petition and a written explanation of the basis for the board's request, the commissioner may order the action requested by the board.

Education Code 12.051, 39A.112; 19 TAC 97.1065(d)

Repurposing of
Closed Campus

If the commissioner orders the closure of a campus, that campus may be repurposed to serve students at that campus location only if the commissioner finds that the repurposed campus offers a distinctly different academic program and approves a new campus identification number for the repurposed campus. A campus may be repurposed if the campus:

1. Serves a majority of grade levels not served at the original campus; or
2. Is operated under a contract, approved by the school board, with a nonprofit organization exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986 that:
 - a. Has a governing board that is independent of the district;
 - b. Has a successful history of operating school district campuses or open-enrollment charter schools:

- (1) That cumulatively serve 10,000 or more students; and
- (2) A majority of which have been assigned an overall performance rating of B or higher under Education Code 39.054 for the preceding school year; and
- c. Has been assigned an overall performance rating of B or higher under Education Code 39.054 for the preceding school year.

Student Enrollment and Assignment

Any student assigned to a campus that has been closed must be allowed to transfer to any other campus in the district that serves that student's grade level and on request must be provided transportation to the other campus.

The commissioner may grant an exemption allowing students assigned to a closed campus to attend the repurposed campus if there is no other campus in the district at which the students may enroll.

Noncontracted Repurposed Campus

The majority of students assigned to a campus that has been closed and repurposed may not have attended that campus in the previous school year if the campus was repurposed to serve a majority of grade levels not served at the original campus.

Enrollment Provision in Contract

A contract approved by the school board with a nonprofit organization must provide that a student residing in the attendance zone of the campus immediately before the campus was repurposed shall be admitted for enrollment at the repurposed campus.

Education Code 39A.113

Targeted Technical Assistance

If the commissioner determines that the basis for the unacceptable performance of a campus for more than two consecutive school years is limited to a specific condition that may be remedied with targeted technical assistance, the commissioner may require the district to contract for the appropriate technical assistance. *Education Code 39A.114*

Commissioner Authority

A decision by the commissioner under the campus turnaround plan subchapter of the Education Code is final and may not be appealed. *Education Code 39A.116*

Alternative Management

The commissioner shall appoint a monitor, conservator, management team, or board of managers whenever such action is required, as determined by 19 Administrative Code 1073. Action under any other section of 19 Administrative Code Chapter 97, Subchapter EE is not a prerequisite to acting under this section. *19 TAC 97.1073*

Solicitation of
Proposals

If the commissioner orders alternative management of a campus, the commissioner shall solicit proposals from qualified nonprofit entities to assume management of the campus or appoint a school district as provided below. The commissioner may solicit proposals from qualified for-profit entities if a nonprofit entity has not responded to the commissioner's request for proposals.

The commissioner may appoint a school district to assume management of the campus if the district:

1. Is not the district in which the campus is located; and
2. Is located within the boundaries of the same regional education service center as the campus.

If a school district is appointed, the district shall assume management of the campus in the same manner as a qualified entity or in accordance with commissioner rule.

The commissioner may annually solicit proposals for the alternative management of a campus. The commissioner shall notify a qualified entity that has been approved as a provider under this section.

Education Code 39A.151

Qualifications of
Managing Entity

To qualify for consideration as a managing entity, the entity must submit a proposal that provides information relating to the entity's management and leadership team that will participate in management of the campus under consideration, including information relating to individuals who have:

1. Documented success in whole school interventions that increased the educational and performance levels of students in campuses considered to have an unacceptable performance rating;
2. A proven record of effectiveness with programs assisting low-performing students;
3. A proven ability to apply research-based school intervention strategies;
4. A proven record of financial ability to perform under the management contract; and
5. Any other experience or qualifications the commissioner determines necessary.

In selecting a managing entity, the commissioner shall give preference to a qualified entity that:

1. Meets any of the commissioner's qualifications; and

2. Has documented success in educating students from similar demographic groups and with similar educational needs as the students who attend the campus to be operated by the managing entity.

Education Code 39A.152

Contract with
Managing Entity

If the commissioner has ordered alternative management of a campus, the district shall execute a contract with an approved provider to serve as a managing entity for the campus. The term of the contract may not exceed five years with an option to renew the contract. The district must execute the contract and relinquish control of the campus before January 1 of the school year.

The management contract must include:

1. A provision describing the district's responsibilities in supporting the operation of the campus; and
2. Provisions approved by the commissioner requiring the managing entity to demonstrate improvement in campus performance, including negotiated performance measures.

Performance measures must be consistent with the priorities of Education Code Chapters 39 and 39A.

The management contract must be approved by the commissioner before the contract is executed. As appropriate, the commissioner may require the district, as a term of the contract, to support the campus in the same manner as the district was required to support the campus before the execution of the contract.

Education Code 39A.153; 19 TAC 97.1067

*Extension of
Management
Contract*

The commissioner may require a district to extend the term of a management contract with a managing entity if the commissioner determines that extending the contract on expiration of the initial term is in the best interest of the students attending the campus. The terms of the contract must be approved by the commissioner.
Education Code 39A.154

*Evaluation of
Managing Entity*

The commissioner shall evaluate a managing entity's performance on the first and second anniversaries of the date of the management contract.

If the evaluation fails to demonstrate improvement as negotiated under the management contract by the first anniversary of the date of the contract, the district may:

1. Terminate the contract, with the commissioner's consent, for nonperformance or breach of contract; and

2. Select another provider from an approved list provided by the commissioner.

If the evaluation fails to demonstrate significant improvement, as determined by the commissioner, by the second anniversary of the date of the management contract, the district shall:

1. Terminate the contract; and
2. Select another provider from an approved list provided by the commissioner or resume operation of the campus if approved by the commissioner.

If the commissioner approves the district's resumed operation of the campus, the commissioner shall assign a technical assistance team to assist the campus.

Education Code 39A.155

*Cancellation of
Management
Contract*

If a campus receives an unacceptable performance rating for two consecutive school years after a managing entity assumes management of the campus, the commissioner shall cancel the contract with the managing entity. *Education Code 39A.156*

Return of
Management to
District

Unless a campus has an unacceptable performance rating for three consecutive school years [see Continued Unacceptable Performance Rating, above], at the end of a management contract term or on the cancellation of a management contract, the board shall resume management of the campus. *Education Code 39A.157*

Applicability of
Accountability
Provisions

Each campus operated by a managing entity is subject to Education Code Chapters 39 and 39A in the same manner as any other campus in the district. *Education Code 39A.158*

Funding

The funding for a campus operated by a managing entity may not be less than the funding of the other campuses in the district on a per student basis so that the managing entity receives at least the same funding the campus would otherwise have received. *Education Code 39A.159*

Open Meetings and
Public Information

With respect to the management of a campus by a managing entity:

1. A managing entity is considered to be a governmental body for purposes of the Texas Open Meetings Act and Public Information Act; and

2. Any requirement in the Texas Open Meetings Act or Public Information Act that applies to a school district or the board of trustees of a district applies to a managing entity.

Education Code 39A.160

Board of Managers
General Powers
and Duties

A board of managers may exercise all of the powers and duties assigned to a board of trustees of a school district by law, rule, or regulation.

A board of managers appointed by the commissioner is required to take appropriate actions to resolve the conditions that caused a campus to be subject to the commissioner's order, including amending the district's budget, reassigning staff, or relocating academic programs. The commissioner may adopt rules necessary to implement this subsection.

Education Code 39A.201

Board of Managers
of District

If the commissioner appoints a board of managers to govern a district:

1. The powers of the board are suspended for the period of the appointment; and
2. The commissioner shall appoint a district superintendent.

A board of managers appointed to govern a school district may amend the budget of the district.

Education Code Chapter 39A applies to a school district governed by a board of managers in the same manner it applies to any other district.

Education Code 39A.202

Board of Managers
of Campus

If the commissioner appoints a board of managers to govern a campus:

1. The powers of the board of trustees of the school district in relation to the campus are suspended for the period of the appointment; and
2. The commissioner shall appoint a campus principal.

A board of managers appointed to govern a campus may submit to the commissioner for approval amendments to the budget of the school district for the benefit of the campus. If the commissioner approves the amendments, the board of trustees of the school district shall adopt the amendments.

Education Code 39A.203

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| Composition of Board of Managers | <p>A board of managers appointed by the commissioner must, if possible, include community leaders, business representatives who have expertise in leadership, and individuals who have knowledge or expertise in the field of education. <i>Education Code 39A.204</i></p> |
| Training of Board of Managers | <p>The commissioner must provide each individual appointed to a board of managers with training in effective leadership strategies. <i>Education Code 39A.205</i></p> <p>The training in effective leadership strategies shall be provided by TEA-approved authorized providers of board training to each individual appointed by the commissioner to a board of managers, and, following the expiration of the appointment of the board of managers, to the board of trustees of the school district. <i>19 TAC 97.1073(h)</i></p> |
| Compensation | <p>The commissioner may authorize payment of a board of managers from TEA funds.</p> <p>A conservator or a member of a management team appointed to serve on a board of managers may continue to be compensated as determined by the commissioner.</p> <p><i>Education Code 39A.206</i></p> |
| Replacement of Member of Board of Managers | <p>The commissioner may at any time replace a member of a board of managers. The commissioner may adopt rules necessary to implement this section. <i>Education Code 39A.207</i></p> |
| Expiration of Appointment | <p>A board of managers shall, during the period of the appointment, order the election of members of the board of trustees of the school district in accordance with the law. The members of the board of trustees do not assume any powers or duties after the election until the appointment of the board of managers expires.</p> <p>Not later than the second anniversary of the date the board of managers of a school district was appointed, the commissioner shall notify the board of managers and the board of trustees of the date on which the appointment of the board of managers will expire. Following each of the last three years of the period of the appointment, one-third of the members of the board of managers shall be replaced by the number of members of the board of trustees who were elected at an election that constitutes, as closely as possible, one-third of the membership of the board of trustees.</p> <p>If, before the second anniversary of the date the board of managers of a school district was appointed, the commissioner determines, after receiving local feedback, that insufficient progress has</p> |

been made toward improving the academic or financial performance of the district, the commissioner may extend the authority of the board of managers for a period of up to two additional years.

On the expiration of the appointment of the board of managers, the board of trustees assumes all of the powers and duties assigned to a board of trustees by law, rule, or regulation.

Following the expiration of the period of appointment of a board of managers for a school district, the commissioner shall provide training in effective leadership strategies to the board of trustees.

Education Code 39A.208; 19 TAC 97.1073

Removal of Board
of Managers

The commissioner may remove a board of managers appointed to govern a school district only if the campus that was the basis for the appointment of the board of managers receives an acceptable performance rating for two consecutive school years.

If a campus that was the basis for the appointment of a board of managers receives an unacceptable performance rating for two additional consecutive years following the appointment of the board of managers, the commissioner may remove the board of managers and, in consultation with the local community, may appoint a new board of managers to govern the district.

Following the removal of a board of managers, or at the request of a managing entity to oversee the implementation of alternative management, the commissioner may appoint a conservator or monitor for the district to ensure district-level support for low-performing campuses and to oversee the implementation of the updated targeted improvement plan.

Education Code 39A.209; 19 TAC 97.1073

**Challenge of
Intervention or
Sanction**

A district that challenges the commissioner's decision to close the district or a campus or to pursue alternative management of a campus must appeal the decision as provided below.

Review of
Sanctions by SOAH

A challenge is under the substantial evidence rule [see Government Code, Chapter 2001, Subchapter G]. The commissioner shall adopt procedural rules for a challenge under this section.

Notwithstanding other law:

1. The State Office of Administrative Hearings (SOAH) shall conduct an expedited review of a challenge;
2. The administrative law judge shall issue a final order not later than the 30th day after the date on which the hearing is finally closed;

3. The decision of the administrative law judge is final and may not be appealed; and
4. The decision of the administrative law judge may set an effective date for an action under this section.

Education Code 39A.301

Annual Review

The commissioner shall annually review the performance of a district or campus subject to intervention and sanction to determine the appropriate actions to be implemented.

The commissioner must review at least annually the performance of a district for which the accreditation status or performance rating has been lowered due to insufficient student performance and may not raise the accreditation status or performance rating until the district has demonstrated improved student performance.

If the review reveals a lack of improvement, the commissioner shall increase the level of state intervention and sanction unless the commissioner finds good cause for maintaining the current status.

Education Code 39A.901

Increasing Intensity

If a district or campus does not exhibit improvement in student performance, the commissioner may increase the intensity of intervention and sanction that would otherwise be required by statute or rule, including ordering campus closure, district annexation, or appointment of a board of managers.

For purposes of this section, improvement means an increase in the scaled score for the overall academic performance rating under Education Code Chapter 39.

19 TAC 97.1070(a)–(b)

**Special
Accreditation
Investigations**

The commissioner may authorize a special accreditation investigation:

1. When excessive numbers of absences of students eligible to be tested on state assessment instruments are determined;
2. When excessive numbers of allowable exemptions from the required state assessment are determined;
3. In response to complaints to TEA of alleged violations of civil rights or other requirements imposed on the state by federal law or court order;
4. In response to established compliance reviews of the district's financial accounting practices and state and federal reporting requirements;

5. When extraordinary numbers of student placements in disciplinary alternative education programs, other than placements under Education Code 37.006 and 37.007, are determined;
6. In response to an allegation involving a conflict between members of the board or between the board and the district administration if it appears that the conflict involves a violation of a role or duty of the board members or the administration clearly defined by the Education Code. If TEA's findings indicate the board has observed a lawfully adopted policy, TEA may not substitute its judgment for that of the board;
7. When excessive numbers of students in special education programs are assessed through modified assessment instruments;
8. In response to an allegation regarding, or an analysis using a statistical method result indicating, a possible violation of an assessment instrument security procedure;
9. When a significant pattern of decreased academic performance has developed as a result of the promotion in the preceding two school years of students who did not perform satisfactorily on the state assessments;
10. When excessive numbers of students eligible to enroll fail to complete an Algebra II course or any other advanced course as determined by the commissioner;
11. When resource allocation practices indicate a potential for significant improvement in resource allocation;
12. When a disproportionate number of students of a particular demographic group is graduating with a particular endorsement;
13. When an excessive number of students is graduating with a particular endorsement;
14. When a school district for any reason fails to produce, at the request of TEA, evidence or an investigation report relating to an educator who is under investigation by the State Board for Educator Certification;
15. In response to a complaint with respect to alleged inaccurate data that is reported through PEIMS or through other reports required by state or federal law or rule or court order and that is used by TEA to make a determination relating to public school accountability, including accreditation, under Education Code Chapter 39;

16. In response to repeated complaints concerning imposition of excessive paperwork requirements on classroom teachers; or
17. As the commissioner otherwise determines necessary.

Education Code 39.057(a)–(c)

TEA shall adopt written procedures for conducting special accreditation investigations, including procedures that allow TEA to obtain information from district employees in a manner that prevents a district or campus from screening the information. *Education Code 39.058(a); 19 TAC 102.1401*

Commissioner
Action

Based on the results of a special accreditation investigation, the commissioner may:

1. Take appropriate action under Education Code Chapter 39A, [see Interventions and Sanctions for School Districts, above];
2. Lower the district's accreditation status or a district's or campus's performance rating; or
3. Take action under both items 1 and 2 above.

Regardless of whether the commissioner lowers the accreditation status or a district's or campus's performance rating, the commissioner may impose one of the district- or campus-level interventions or sanctions under Education Code 39A.002 [see Interventions and Sanctions for School Districts, above].

Education Code 39.057(d), (e)

**Miscellaneous
Provisions**

Acquisition of
Professional
Services

In addition to other authorized interventions and sanctions, the commissioner may order a district or campus to acquire professional services at the expense of the district or campus to address the applicable financial, assessment, data quality, program, performance, or governance deficiency. The commissioner's order may require the district or campus to:

1. Select or be assigned an external auditor, data quality expert, professional authorized to monitor district assessment instrument administration, or curriculum or program expert; or
2. Provide for or participate in the appropriate training of district staff or board members in the case of a district, or campus staff, in the case of a campus.

Education Code 39A.902

Costs Paid by
District

The costs of providing a monitor, conservator, management team, campus intervention team, technical assistance team, managing entity, or service provider shall be paid by the district. If the district

fails or refuses to pay the costs in a timely manner, the commissioner may:

1. Pay the costs using amounts withheld from any funds to which the district is otherwise entitled; or
2. Recover the amount of the costs in the manner provided for recovery of an over allocation of state funds under Education Code 48.272.

Education Code 39A.903

Monitoring Reviews
and On-Site
Investigations

Except as provided by Education Code 7.028(a), the commissioner may direct TEA to conduct monitoring reviews and random on-site visits of a district at any time, as authorized by Education Code 7.028, only as necessary to ensure:

1. Compliance with federal law and regulations;
2. Financial accountability, including compliance with grant requirements; and
3. Data integrity for purposes of:
 - a. The Public Education Information Management System (PEIMS);
 - b. Accountability under Education Code Chapter 39 and 39A; and
4. Qualification for funding under Chapter 48.

The board of trustees has primary responsibility for ensuring that the district complies with all applicable requirements of state educational programs.

Education Code 7.028

[Compliance
Monitoring
Activities](#)

[Districts are subject to general supervision and monitoring activities for compliance with state law and federal regulation and review of program implementation and effectiveness within certain special populations of students.](#)

[Activities may include:](#)

1. [Random, targeted, or cyclical reviews authorized under Education Code 39.056 \(monitoring reviews\), conducted remotely or on-site to identify problems implementing state and federal requirements and to provide support for development of reasonable and appropriate strategies to address identified problems; and/or](#)

2. Intensive or special investigative remote or on-site reviews authorized under Education Code 39.057 (special accreditation investigations).

Activities described in item 1, above, are applicable for compliance with requirements for reading diagnosis in Education Code 28.006 [see EKC] and dyslexia and related disorders in Education Code 38.003 and 19 Administrative Code 74.28 [see EHB].

19 TAC 97.1071(a)–(b)

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| <i>Notice</i> | TEA shall give written notice to the superintendent and the board of trustees of any impending monitoring review. <i>Education Code 39.056(d)</i> |
| <i>Conducting the Review</i> | A monitoring review may include desk reviews and on-site visits, including random on-site visits. In conducting a monitoring review, TEA may obtain information from administrators, other district employees, parents of students enrolled in the district, and other persons as necessary. <i>Education Code 39.056(c), (g)</i> |
| <i>Accreditation Investigation</i> | The commissioner may at any time convert a monitoring review to a special accreditation investigation under Education Code 39.057, provided the commissioner promptly notifies the district of the conversion. <i>Education Code 39.056(h)</i> |
| <i>Improvements</i> | TEA shall report in writing to the superintendent and president of the board and shall make recommendations concerning any necessary improvements or sources of aid such as regional education service centers. A district that takes action with regard to the recommendations provided by TEA shall make a reasonable effort to seek assistance from a third party in developing an action plan to improve district performance using improvement techniques that are goal-oriented and research-based. <i>Education Code 39.056(e)–(f)</i> |
| Immunity from Civil Liability | An employee, volunteer, or contractor acting on behalf of the commissioner, or a member of a board of managers appointed by the commissioner, is immune from civil liability to the same extent as a professional employee of a district under Education Code 22.051. <i>Education Code 39A.904</i> |
| Campus Name Change | In reconstituting, repurposing, or imposing any other intervention or sanction on a campus, the commissioner may not require that the name of the campus be changed. <i>Education Code 39A.905</i> |
| Transitional Interventions and Sanctions | For a campus that received an unacceptable performance rating for the 2013–14, 2014–15, and 2015–16 school years, the commissioner may apply the interventions and sanctions authorized by |

Chapter 39 as that chapter existed on January 1, 2015, to the campus.

If a campus receives an unacceptable performance rating for the 2016–17 and 2017–18 school years, the commissioner shall apply the interventions and sanctions authorized when a campus has an unacceptable performance rating for three consecutive school years under current law.

For a campus that received an acceptable performance rating for the 2013–14 school year and an unacceptable performance rating for the 2014–15 and 2015–16 school years, the commissioner shall apply interventions and sanctions in current law to the campus. If the campus receives an unacceptable performance rating for the 2016–17, 2017–18, and 2018–19 school years, the commissioner shall apply the interventions and sanctions authorized when a campus has an unacceptable performance rating for three consecutive school years under current law.

These transition provisions expire September 1, 2020.

Education Code 39A.906

Special Program
Performance:
~~Intervention Stages~~
Determination

The commissioner shall assign ~~a district to~~districts an ~~intervention stage~~annual determination level based on performance levels of certain special populations student groups under 19 Administrative Code 97.1005 (Results Driven Accountability) [see AIB] according to the criteria and requirements in 19 Administrative Code 97.1071.

~~Intervention~~The commissioner shall notify in writing each district identified for review under this section as a result of assigned determination level or cyclical selection prior to requiring a district to implement or participate in any activities included in 19 Administrative Code 97.1071(f)(1)–(6).

Actions taken under this section are intended to assist the district in raising its performance and/or achieving compliance under 19 Administrative Code 97.1005 and 74.28 and Education Code sections 28.006 and 38.003 and do not preclude or substitute for a sanction under another provision of Chapter 97, Subchapter EE.

19 TAC 97.1071(c), (g), (h)

Intervention Pause

Except as otherwise provided by 19 Administrative Code 97.1062 and unless extended by the commissioner, TEA will cease to enforce the interventions under Education Code 39A.101-39A.111 until conclusion of the second consecutive school year of operation under:

1. A partnership as defined by 19 Administrative Code 97.1077(a)(2), (b), or (c) of this title [see ELA]; or
2. Designation as a mathematics innovation zone under Education Code 28.020 and applicable rules.

Any intervention or sanction not covered by the provision above shall continue.

If a campus ceases to qualify for the intervention pause at any point during a school year, TEA will resume previously ordered interventions and sanctions, order interventions and sanctions based on the rating from that school year, and count that rating for purposes of consecutive years of performance.

19 TAC 97.1062

Failure to Submit
[EOP Emergency
Operations Plan](#)

If TEA receives notice from the Texas School Safety Center of a district's failure to submit a multihazard emergency operations plan [see CKC], the commissioner may appoint a conservator for the district under Education Code Chapter 39A. The conservator may order the district to adopt, implement, and submit a multihazard emergency operations plan. If a district fails to comply with a conservator's order to adopt, implement, and submit a multihazard emergency operations plan within the time frame imposed by the commissioner, the commissioner may appoint a board of managers under Education Code Chapter 39A to oversee the operations of the district. *Education Code 37.1082(a)–(b)*

Note: The following provisions apply to a district with a central administrative office that is located in a county with a population of more than two million and that has a student enrollment that is more than 125,000 and less than 200,000, and that is operating under a turnaround plan.

Student Board
Member

Notwithstanding Education Code 11.051(b) (number of trustees on a school board), the board may adopt a resolution establishing as a nonvoting member a student trustee position. If a board adopts such a resolution, the board shall adopt a policy addressing the topics specified in statute. *Education Code 11.0511*

Note: If the district is subject to a court order or other binding legal determination, the district shall conduct its elections in accordance with that court order or determination, applicable law, and this policy. To the extent of any conflict, the court order or other legal determination shall prevail. [See BBB(LOCAL)]

Resignation

To be effective, a board member’s resignation must be in writing and signed by the board member and delivered to the presiding officer of the board. A board may not refuse to accept a resignation. *Election Code 201.001*

Effective Date

If a board member submits a resignation, whether to be effective immediately or at a future date, a vacancy occurs on the date the resignation is accepted by the board or on the eighth day after the date of its receipt by the board, whichever is earlier. *Election Code 201.023*

Holdover Doctrine

All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified (i.e., sworn in). Until the vacancy created by a board member’s resignation is filled by a successor, the board member continues to serve and have the duties and powers of office and continues to be subject to the nepotism provisions. A holdover board member may not vote on the appointment of his or her successor. *Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (1987), O-6259 (1945)* [See DBE for more information on nepotism]

Residency

A person elected or appointed to serve as a board member must remain a resident of the district throughout the term of office. A board member who ceases to reside in the district vacates the office. *Tex. Const., Art. XVI, Sec. 14; Prince v. Inman, 280 S.W.2d 779 (Tex. Civ. App.—Beaumont 1955, no writ); Whitmarsh v. Buckley, 324 S.W.2d 298 (Tex. Civ. App.—Houston 1959, no writ)* [See BBA]

Single-Member District

A trustee vacates the office if the trustee ceases to reside in the district the trustee represents. *Education Code 11.052(g)*

Filling a Vacancy

If a vacancy occurs on the board, the remaining board members may fill the vacancy by appointment until the next trustee election, or may order a special election to fill the vacancy. If more than one year remains in the term of the position vacated, the vacancy shall be filled not later than the 180th day after the date the vacancy occurs. *Education Code 11.060*

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| Appointment | To be eligible to be appointed to a board, a person must have the qualifications set forth at Election Code 141.001(a). <i>Election Code 141.001(a)</i> [See BBA] |
| Special Election | <p>A special election to fill a vacancy shall be conducted in the same manner as the district's general election. <i>Education Code 11.060(c)</i></p> <p>An election to fill a vacancy shall be to fill the unexpired term only. <i>Tex. Const. Art. XVI, Sec. 27</i></p> |
| <i>Date of Election</i> | A special election to fill a vacancy shall be held on an authorized uniform election date occurring within the required period after the vacancy occurs. If no uniform election date affords enough time to hold the election in the manner required by law, the election shall be held on the first authorized uniform election date occurring after the expiration of the period. <i>Election Code 41.001(a), .004(a); Atty. Gen. Op. KP-102 (2016)</i> [See BBB] |
| <i>Ordering Election</i> | <p>If a vacancy is to be filled by special election, the election shall be ordered as soon as practicable after the vacancy occurs. <i>Election Code 201.051(a)</i></p> <p>Except as otherwise provided by the Election Code, a special election to fill a vacancy shall be held on the first authorized uniform election date occurring on or after the 46th day after the date the election is ordered. <i>Election Code 201.052(a)</i></p> <p>If the special election is to be held on the date of the general election for state and county officers, the election shall be ordered not later than the 78th day before election day. The general election for state and county officers is the first Tuesday after the first Monday in November in even-numbered years. <i>Election Code 41.002, 201.051</i></p> |
| Officer's Statement and Oath | For requirements regarding the officer's statement and oath of office, see BBBB(LEGAL). |
| Former Board Member Employment | A trustee may not accept employment with the district until the first anniversary of the date the trustee's membership on a board ends. <i>Education Code 11.063</i> |
| Involuntary Removal from Office | On his or her own motion or at the request of an individual, the attorney general or the county or district attorney may petition the district court for leave to file an information in the nature of quo warranto. An action in the nature of quo warranto is available if: |
| Quo Warranto | <ol style="list-style-type: none">1. A person usurps, intrudes into, or unlawfully holds or executes an office; or2. A public officer does an act or allows an act that by law causes forfeiture of office. |

If the person against whom the information is filed is found guilty as charged, the court:

1. Shall enter judgment removing the person from the office and for the costs of prosecution; and
2. May fine the person for usurping, intruding into, or unlawfully holding and executing the office.

Civ. Prac. & Rem. Code 66.001–.003

Removal by Petition
and Trial

A proceeding for the removal of a board member is begun by filing a written petition for removal in district court of the county in which the board member resides. A resident of the state who has lived for at least six months in the county in which the petition is to be filed and who is not currently under indictment in the county may file a petition. *Local Gov't Code 87.015*

*Reasons for
Removal*

A board member may be removed from office for:

1. “Incompetency,” which means:
 - a. Gross ignorance of official duties;
 - b. Gross carelessness in the discharge of those duties; or
 - c. Unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of election.
2. “Official misconduct,” which means intentional, unlawful behavior relating to official duties by a board member entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of a board member to perform a duty imposed on the board member by law.
3. Intoxication on or off duty caused by drinking an alcoholic beverage, but not if it was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician.
4. Conviction of a board member by a jury for any felony or for misdemeanor official misconduct. The conviction of a public officer by a petit jury for any felony or for a misdemeanor involving official misconduct operates as an immediate removal from office of that officer.

Tex. Const., Art. V, Sec. 24; Local Gov't Code 87.011, .012(14), .013, .031

*Removal for
Purchasing
Violations*

~~A trustee who is convicted of a purchasing offense [see CH(LEGAL), regarding impermissible practices] is considered to have committed official misconduct and is subject to removal under Local Government Code Chapter 87. Education Code 44.032(e)~~

[See CH for information regarding removal for purchasing violations.](#)

**Temporary
Replacement of
Board Member on
Military Active Duty**

A board member who enters active duty in the armed forces of the United States as a result of being called to duty, drafted, or activated does not vacate the office held, but the board may appoint a replacement to serve as a temporary board member if the elected or appointed board member will be on active duty for longer than 30 days.

The board member who is temporarily replaced may recommend to the board the name of a person to temporarily fill the office. The board shall appoint the temporary board member to begin service on the date specified in writing by the board member being temporarily replaced as the date the board member will enter active military service.

A temporary board member has all the powers, privileges, and duties of the office as the board member who is temporarily replaced. A temporary board member shall perform the duties of office for the shorter period of:

1. The term of the active military service of the board member who is temporarily replaced; or
2. The term of office of the board member who is temporarily replaced.

“Armed forces of the United States” means the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, the United States Coast Guard, any reserve or auxiliary component of any of those services, or the National Guard.

Tex. Const., Art. XVI, Sec. 72

Framework for School Board Development

Preamble: ~~A board is~~ The mission of the public education system of this state is to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational policy-making opportunities of our state and nation (Education Code 4.001).

~~The board of trustees is the governing~~ body for a district Texas public schools. To effectively meet the challenges of public education, ~~a board school boards and a superintendent superintendents~~ must function together as a governance leadership team. Each leadership team ~~must~~ will annually assess its development needs both as a corporate body and ~~individually to gain an understanding of the~~ as individuals. ~~As a team, they will focus on the improvement of locally developed student outcomes and provide support for opportunities and experiences through vision, structure, and goals, systems and processes, progress and accountability, advocacy, and unity needed to provide~~ and engagement, and synergy and teamwork. Teams ensure that their districts provide equitable and effective educational programs and services that ensure the equity and excellence in performance of for all students. The Framework for School Board Development has been approved by the State Board of Education to provide the critical areas of development for all public school boards.

1. Vision and Goals — The board ensures creation of a shared vision and locally developed, measurable goals that ~~promotes enhanced~~ improve student ~~achievement. outcomes and provide support for opportunities and experiences.~~ The board:

- Keeps the district focus on the ~~educational welfare~~ well-being of all children.
- ~~The board~~ Adopts a shared vision ~~based on that incorporates input from the community beliefs to guide~~ reflect local ~~education~~ aspirations as well as present and future needs for all children.
- ~~The board~~ Ensures that the vision ~~supports~~ aligns with the state's mission, objectives, and goals for education established by law and/or rule.
- ~~The~~ Adopts a reasonable number of specific, quantifiable, research-based, and time-bound goals that align with state law, are developed with community input, and support the vision to improve student outcomes.
- Embraces, supports, and fulfills the vision that all students receive what they need to learn, thrive, and grow, including resources, opportunities, and experiences.
- Uses the vision and goals to drive all deliberations, decisions, and actions.

2. Systems and Processes — The board ensures systems and processes are in place to accomplish the vision and goals. The board:

- Regularly develops, reviews, and adopts board ~~ensures that~~ policies for effective support of the district's vision ~~expresses the present and future needs of the children and community~~ and goals.

- ~~The board uses the vision to assess the importance of individual issues that come before the board and demonstrates its commitment to the vision by using the vision to guide all board deliberations, decisions, and actions.~~
 - ~~Individual board members should not have individual agendas separate and apart from the shared vision.~~
4. ~~Structure~~ — ~~The board provides guidance and direction for accomplishing the vision.~~
- ~~The board recognizes the respective roles of~~ Approves a budget that aligns with and maximizes resources to fulfill the district's vision and goals.
 - Monitors multiple, measurable elements of student progress and achievement throughout the year.
 - Incorporates equity when making decisions and evaluating systems and processes.
 - Focuses its actions on following board operating procedures while providing oversight of the superintendent, policymaking, planning and goal setting, progress monitoring, and evaluation, while avoiding involvement in daily operations and management.
 - Approves goals, policies, and programs that ensure a safe and secure learning environment.
 - Ensures the equitable distribution of resources, opportunities, and experiences based on the diverse needs of students and schools.
 - Adopts a planning calendar and engages in a decision-making process consistent with state law and rule to help achieve the legislature, district's vision.
 - Ensures that the ~~State Board of Education,~~ district's planning and decision-making process enables all segments of the ~~Texas Education Agency, and community,~~ families, and staff to meaningfully contribute to achieving the ~~local board~~ district's vision.
 - Welcomes and values all people and cultures as important stakeholders in the ~~governance of~~ process for student success.
 - Ensures the district has a system that monitors for sound business and fiscal practices.
 - ~~The board~~ Adopts policies regarding hiring, assigning, appraising, terminating, and compensating school district personnel in compliance with state laws and rules.
 - Ensures the district adopts a protocol regarding the recruitment, determination of professional development needs, building of leadership capacity, and retention rates for the district's teachers.

- Fulfills the statutory duties of the local board of trustees and upholds all laws, rules, ethical procedures, and court orders pertaining to schools and school employees.
 - ~~The board focuses its actions on policy making, planning, Progress and evaluation, and restricts its involvement in management to the responsibility of oversight.~~
 - ~~The board adopts a planning and decision-making process consistent with state law and/or rule that uses participation, information, research, and evaluation to help achieve the district's vision.~~
 - ~~The board ensures that the district's planning and decision-making process enables all segments of the community, parents, and professional staff to contribute meaningfully to achieving the district's vision.~~
 - ~~The board develops and adopts policies that provide guidance for accomplishing the district's vision, mission, and goals.~~
 - ~~The board adopts a budget that incorporates sound business and fiscal practices and provides resources to achieve the district's vision, mission, and goals.~~
 - ~~The board adopts goals, approves student performance objectives, and establishes policies that provide a well-balanced curriculum resulting in improved student learning.~~
 - ~~The board approves goals, policies, and programs that ensure a safe and disciplined environment conducive to learning.~~
 - ~~The board oversees the management of the district by employing a superintendent and evaluating the superintendent's performance in providing education leadership, managing daily operations, and performing all duties assigned by law and/or rule and in support of the district's vision.~~
 - ~~The board adopts policies and standards for hiring, assigning, appraising, terminating, and compensating district personnel in compliance with state laws and rules.~~
- 4.3. Accountability — The board ~~measures and communicates how well the vision is being accomplished.~~ sets clear goals, provides resources and support, evaluates goal attainment, and engages in ongoing objective feedback on progress and commitments. The board:
- ~~The board~~ Holds itself accountable to its adopted vision, goals, commitments, and operating procedures.
 - Ensures progress toward achievement of district goals through ~~a~~ systematic, timely, and comprehensive review of relevant reports ~~prepared by or at the direction of the superintendent~~ and student data that illustrate progress toward locally developed student outcome goals.

- ~~• The board monitors the effectiveness and efficiency of instructional programs by reviewing reports prepared by or at the direction of the superintendent and directs the superintendent to make modifications that promote maximum achievement for all students.~~
 - ~~• The board ensures that appropriate assessments are used to measure achievement of all students.~~
 - ~~• The board reports district progress to parents~~ Ensures equity throughout the system by regularly identifying inequities, updating policies, and appropriately distributing resources.
 - Differentiates among resources, intermediate measures, and outcomes, especially when focusing on student outcomes.
 - ~~• Monitors and community~~ evaluates the allocation of resources ~~in compliance with state laws and regulations.~~
 - ~~• The board reviews district policies for effective~~ support of the district's vision, ~~mission,~~ and goals and sustainability.
 - ~~• The board~~ Reviews the efficiency and effectiveness of district operations and use of resources in supporting the district's vision, ~~mission,~~ and goals.
 - ~~• The board~~ Employs and annually evaluates the ~~superintendent's performance annually in compliance with state laws and regulations.~~
 - ~~• The board annually evaluates its own performance in fulfilling the board's duties and responsibilities, and the board's ability to work with the superintendent as a team on the achievement of district goals, including locally developed academic goals, demonstration of educational leadership, and management of daily operations.~~
- 2.4. Advocacy and Engagement — The board promotes the vision and engages the community in developing and fulfilling the vision. The board advocates on behalf of Texas public schoolchildren. The board:
- ~~• The board~~ Demonstrates its commitment to, and advocates on behalf of, the shared vision, ~~mission,~~ and goals by clearly communicating them to the superintendent, ~~the~~ staff, and community.
 - ~~• The board ensures~~ Regularly reports district progress to families and the community, which could include an effective online dashboard for the community.
 - Ensures multiple forms of two-way communication ~~system between the district and its~~ will be used to engage, empower, and connect students, ~~parents, employ-~~ ees families, staff, media, and community with the ~~community~~ district.

- ~~The board builds~~ Builds collaborative relationships and partnerships with families and community, business, nonprofit, higher-education, education support organizations, and governmental leaders to influence and expand educational opportunities and meet the needs of students.
 - ~~The board supports children by establishing partnerships between the district, parents, business leaders, and other community members as an integral part of the district's educational program.~~
 - ~~The board leads in recognizing the achievements of students, staff, and others in education.~~
 - ~~The board promotes school board service as a meaningful way to make long-term contributions to the local community and society.~~
 - ~~The board~~ Recognizes the respective roles of and provides input and feedback to the legislature, State Board of Education, and the Texas Education Agency ~~regarding proposed changes~~ to ensure maximum effectiveness and benefit to ~~the~~ Texas schoolchildren ~~in the district.~~
 - Unity Promotes school board service by educating the community about the role of a school board and encouraging leadership opportunities within the community.
- 3-5. Synergy and Teamwork — The board's duties are distinct, and the board works effectively as a collaborative unit and as a team with the superintendent to lead the district ~~toward~~ in fulfilling the vision ~~and goals.~~ The board:
- ~~The board ensures~~ Recognizes its distinct role in establishing the vision and the goals, adopting policies that ~~its members understand and respect the need~~ guide the district, setting priorities, establishing governance protocols to ~~function as a team in governing and overseeing the~~ oversee management of the district.
 - ~~The board develops skills in teamwork, problem solving, and decision making.~~
 - ~~The board~~ ~~Establishes and follows local policies, procedures, and ethical standards governing the conduct and operations of the board.~~
 - ~~The board understands and adheres to laws,~~ adopting and overseeing the annual budget, and local policies regarding the board's responsibility to set policy hiring and ~~the superintendent's responsibility to manage the district and to direct employees in district and campus matters~~ evaluating the superintendent.
 - ~~The board recognizes the leadership role of the board president~~ Recognizes each individual trustee's duty as a trustee and fiduciary for the entire district.
 - Remains focused on its goals and priorities, as opposed to individual agendas separate and ~~adheres to law~~ apart from the shared vision.

- Annually evaluates its performance as a team, with attention given to the district's vision and local policies regarding goals; fulfilling the board's duties and responsibilities of the board president, and commitments; and other officers the board's working relationship with the superintendent.
- ~~The board adopts and adheres to established policies and procedures for receiving and addressing ideas and concerns from students, parents, employees, and the community.~~
- ~~The board~~ Makes decisions as a whole only at properly called meetings and recognizes that individual members have no authority to take individual action in policy or district and campus administrative matters.
- ~~The board supports decisions of the majority after honoring~~ Respects the right of individual members to express ~~opposing their~~ viewpoints and vote their convictions and honors the decisions of the majority.
- Develops teamwork, problem-solving, and decision-making skills as a team with its superintendent.
- Understands and adheres to laws and local policies and respects the superintendent's responsibility to manage the school district and to direct employees in district and campus matters.
- Adopts and adheres to established policies and procedures for welcoming and addressing ideas and concerns from students, families, staff, and the community.
- Establishes and follows local policies, procedures, and ethical standards governing the conduct and operations of the board.
- Understands the leadership role of the board president and adheres to local policies and procedures about the duties and responsibilities of the board officers.

Adopted by the State Board of Education, January 1996, as authorized by 19 TAC 61.1;(a); revised ~~July 2012~~ November 20, 2020.

Suspension Without Pay

~~A board may,~~ For good cause, as determined by the board, [the board may](#) suspend a superintendent without pay [for a period not to extend beyond the end of the school year](#) pending discharge or in lieu of termination. ~~The suspension may not extend beyond the end of the school year.~~ *Education Code 21.201(1), .211(b)*

~~The procedures for hearings before a hearing examiner apply if a superintendent requests a hearing after receiving notice of a proposed decision to suspend the superintendent without pay. Education Code 21.251(a)(3)~~

Back Pay

A superintendent who is not discharged after being suspended without pay pending discharge is entitled to back pay for the period of suspension. *Education Code 21.211(c)*

Contract Termination

The board may terminate a term contract and discharge the superintendent at any time for good cause as determined by the board. *Education Code 21.211(a), .212(d)*

Due Process

Before dismissal for good cause, a superintendent shall be given notice of the charges against him or her, an explanation of the district's evidence, and an opportunity to respond. *Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 (1985)*

Hearing on Proposed Suspension or Termination

[Education Code Chapter 21, Subchapter F \(Hearings before Hearing Examiners\)](#) applies if a superintendent ~~desires~~[requests](#) a hearing ~~before an independent hearing examiner on a~~[after receiving notice of the](#) proposed decision to terminate the superintendent's term contract, [before the end of the contract period or suspend](#) the superintendent [without pay.](#) *Education Code 21.251(a)(2)-(3)*

[The superintendent](#) must file a written request for ~~such~~ a hearing [under Subchapter F](#) with the commissioner ~~of education~~ not later than the 15th day after the date the superintendent receives written notice of the proposed action. The superintendent must provide the district with a copy of the request. [and must provide the commissioner with a copy of the notice.](#) The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing. *Education Code 21.251, .253* [See DFD]

Severance Payments

~~A board that makes a severance payment to a superintendent shall report the terms of the payment to the commissioner.~~

Definition

"Severance payment" means any amount paid by a board to or in behalf of a superintendent on early termination of the superintendent's contract that exceeds the amount earned by the superintendent under the contract as of the date of termination, including any amount that exceeds the amount of earned standard salary and benefits that is paid as a condition of early termination of the contract. Payments to a former superintendent who remains employed

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|------------------------|---|
| Duty to Report | <p><u>by a district in another capacity or contracts with a district to provide the district services may be severance payments in whole or in part if the payments are compensation for the early termination of a prior employment agreement. Severance payments include any payment for actual or threatened litigation involving or related to the employment contract. <i>Education Code 11.201(c); 19 TAC 105.1021(a)(1)</i></u></p> |
| | <p><u>The board that makes a severance payment to a superintendent shall report the terms of the severance payment to the commissioner. <i>Education Code 11.201(c)</i></u></p> <p>A district that makes a payment of any kind to a departing superintendent must file with <u>the Texas Education Agency (TEA)</u> a Superintendent Payment Disclosure Form. No form is required to be filed for payments <u>a payment</u> already earned and payable under the terms of a terminated employment contract, such as a payment for accrued vacation.</p> <p>The interim superintendent, new superintendent, or board president is responsible for timely filing the Superintendent Payment Disclosure Form. The form must be filed by the 60th day after the district executes the agreement to make the payment or the 60th day after any payment under such an agreement, whichever is sooner. <u>The interim superintendent, new superintendent, or board president is responsible for timely filing the Superintendent Payment Disclosure Form.</u> Filing of the disclosure form is required regardless of whether a district considers a payment to be a severance payment as that term is defined below. <u>above.</u></p> <p>Compliance with the reporting requirement <u>requirements of these provisions</u> is <u>considered</u> part of the district's compliance with required financial accounting practices under Education Code 39.057-(a)(4). Failure to comply may result in sanctions- <u>as authorized by Education Code 39.057(d) and (e).</u></p> |
| Required Documentation | <p>A district must enclose with the submitted Superintendent Payment Disclosure Form a copy of the superintendent employment contract and a copy of the termination or severance agreement. A district must provide the commissioner with any information or documentation that the commissioner requests under 19 Administrative Code 105.1021(b)(4) in order to determine <u>if whether</u> a payment <u>to a departing superintendent</u> is a severance payment <u>and whether a district is subject to reductions in Foundation School Program (FSP) funding under 19 Administrative Code 105.1021.</u></p> <p><u>19 TAC 105.1021(b), (d)</u></p> |

Reduction of State
Funds

The commissioner shall reduce a district's ~~Foundation School Program (FSP)~~ funds by any amount that the severance payment exceeds one year's salary and benefits under the superintendent's terminated contract. The commissioner will reduce the district's FSP funding for the school year following the school year in which the first payment requiring an FSP reduction is made to the former superintendent. The commissioner also will reduce the district's FSP ~~funds~~ funding in the school year following each school year that any additional payment requiring an FSP reduction is made to the former superintendent. If a district's liability to the state exceeds the total of the district's estimated payments of FSP funding for the remainder of the school year, the district is subject to reductions in its FSP funding for subsequent school years until the liability has been fully liquidated.

A reduction in FSP funding under these provisions does not affect a district's obligation to comply with all provisions of Education Code Chapter 4248, including its obligation under that chapter to provide educational services to special populations.

~~Definition~~

~~"Severance payment" means any amount paid by a board to or in behalf of a superintendent on early termination of the superintendent's contract that exceeds the amount earned by the superintendent under the contract as of the date of termination, including any amount that exceeds the amount of earned standard salary and benefits that is paid as a condition of early termination of the contract. "Severance payment" includes any payment for actual or threatened litigation involving or related to the employment contract.~~

~~Payments to a former superintendent who remains employed by a district in another capacity or contracts with a district for services may be severance payments in whole or in part, if the payments are compensation for the early termination of a prior employment agreement.~~

19 TAC 105.1021(c); Education Code 11.201(c); 19 TAC 105.1021

Please Note: This manual does not have policies in all codes. The coding structure is common to all TASB manuals and is designed to accommodate expansion of both (LEGAL) and (LOCAL) policy topics and administrative regulations.

SECTION C: BUSINESS AND SUPPORT SERVICES

| | |
|------|---|
| CA | FISCAL MANAGEMENT GOALS AND OBJECTIVES |
| CAA | Financial Ethics |
| CB | STATE AND FEDERAL REVENUE SOURCES |
| CBA | State |
| CBB | Federal |
| CC | LOCAL REVENUE SOURCES |
| CCA | Bond Issues |
| CCB | Time Warrants |
| CCC | Certificates of Indebtedness |
| CCD | Recreational Facilities Bonds |
| CCE | Athletic Stadium Authority |
| CCF | Loans and Notes |
| CCG | Ad Valorem Taxes |
| CCGA | Exemptions and Payments |
| CCGB | Economic Development |
| CCH | Appraisal District |
| CD | OTHER REVENUES |
| CDA | Investments |
| CDB | Sale, Lease, or Exchange of School-Owned Property |
| CDBA | Revenue Bonds from Proceeds |
| CDC | Gifts and Solicitations |
| CDD | Rentals and Service Charges |
| CDE | Shop Sales |
| CDF | Royalties |
| CDG | Gate Receipts, Concessions |
| CDH | Public and Private Facilities |
| CE | ANNUAL OPERATING BUDGET |
| CEA | Financial Exigency |
| CF | ACCOUNTING |
| CFA | Financial Reports and Statements |
| CFB | Inventories |
| CFC | Audits |
| CFD | Activity Funds Management |
| CFE | Payroll Procedures |
| CFEA | Salary Deductions and Reductions |
| CFF | Checking Accounts |
| CFG | Cash in School Buildings |
| CG | BONDED EMPLOYEES AND OFFICERS |

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SECTION C: BUSINESS AND SUPPORT SERVICES

| | |
|------|---|
| CH | PURCHASING AND ACQUISITION |
| CHB | Petty Cash Account |
| CHD | Purchasing Procedures |
| CHE | Vendor Relations Disclosures and Contracts |
| CHF | Payment Procedures |
| CHG | Real Property and Improvements |
| CHH | Financing Personal Property Purchases |
| CI | SCHOOL PROPERTIES DISPOSAL |
| CJ | CONTRACTED SERVICES |
| CJA | Criminal History |
| CK | SAFETY PROGRAM/RISK MANAGEMENT |
| CKA | Inspections |
| CKB | Accident Prevention and Reports |
| CKC | Emergency Plans |
| CKD | Emergency Medical Equipment and Procedures |
| CKE | Security Personnel |
| CKEA | Commissioned Peace Officers |
| CKEB | School Marshals |
| CKEC | School Resource Officers |
| CL | BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT |
| CLA | Security |
| CLB | Maintenance |
| CLC | Traffic and Parking Controls |
| CLD | Records and Reports |
| CLE | Flag Displays |
| CM | EQUIPMENT AND SUPPLIES MANAGEMENT |
| CMA | Receiving and Warehousing |
| CMB | Authorized Uses of Equipment and Supplies |
| CMD | Instructional Materials Care and Accounting |
| CN | TRANSPORTATION MANAGEMENT |
| CNA | Student Transportation |
| CNB | District Vehicles |
| CNBA | Bus Maintenance |
| CNC | Transportation Safety |
| CO | FOOD AND NUTRITION MANAGEMENT |
| COA | Procurement |
| COB | Free and Reduced-Price Meals |
| COC | Vending Machines |

Please Note: This manual does not have policies in all codes. The coding structure is common to all TASB manuals and is designed to accommodate expansion of both (LEGAL) and (LOCAL) policy topics and administrative regulations.

SECTION C: BUSINESS AND SUPPORT SERVICES

| | |
|------|--|
| CP | OFFICE MANAGEMENT |
| CPA | Office Communications |
| CPAA | Printing and Duplicating |
| CPAB | Mail and Delivery |
| CPAC | Telephone |
| CPC | Records Management |
| | |
| CQ | TECHNOLOGY RESOURCES |
| CQA | District, Campus, and Classroom Websites |
| CQB | Cybersecurity |
| CQC | Equipment |
| | |
| CR | INSURANCE AND ANNUITIES MANAGEMENT |
| CRA | Property Insurance |
| CRB | Liability Insurance |
| CRD | Health and Life Insurance |
| CRE | Workers' Compensation |
| CRF | Unemployment Insurance |
| CRG | Deferred Compensation and Annuities |
| | |
| CS | FACILITY STANDARDS |
| | |
| CT | FACILITIES PLANNING |
| | |
| CV | FACILITIES CONSTRUCTION |
| CVA | Competitive Bidding |
| CVB | Competitive Sealed Proposals |
| CVC | Construction Manager-Agent |
| CVD | Construction Manager-at-Risk |
| CVE | Design-Build |
| CVF | Job Order Contracts |
| | |
| CW | NAMING FACILITIES |
| | |
| CX | CONTRACTS FOR FACILITIES |
| | |
| CY | INTELLECTUAL PROPERTY |

The Texas Education Agency (TEA) may enter into an agreement with a federal agency concerning a project related to education, including provision of school lunches and construction of school buildings. TEA, or another state agency designated by the governor, shall coordinate the actions of a district participating in a federal financial assistance program. *Education Code 7.021(b), (c); Gov't Code 742.003*

**Retirement and
Insurance
Contributions**

Under the Texas Public School Retired Employees Group Benefits Act, Insurance Code Chapter 1575, a district that applies for money provided by the United States or a privately sponsored source shall, if any of the money will pay part or all of an active employee's salary, also apply for any legally available money to pay state contributions required by Insurance Code Chapter 1575, Subchapter E. *Insurance Code 1575.252*

Such district must comply with the requirements of Insurance Code Chapter 1575, Subchapter F. *Insurance Code 1575.252(2)–.257*

Under the Teacher Retirement System, Government Code, Title 8, Subtitle C, if a district applies for money provided by the United States, an agency of the United States, or a privately sponsored source, and if any of the money will pay part or all of an employee's salary, the district shall apply for any legally available money to pay state contributions required by Government Code 825.404 or 830.201. *Gov't Code 825.406(a)*

Such district must comply with the requirements of Government Code 825.406.

Block Grant Funds

If a district receives more than \$5,000 in block grant funds to be used as the district determines is appropriate, it shall provide evidence to TEA that a public meeting or hearing was held in a timely manner solely to seek public comment on the needs or uses of block grant funds received by the district. The board may hold this meeting or hearing in conjunction with another board meeting or hearing if the meeting or hearing to consider block grant funds is clearly noted in an announcement of the other meeting or hearing. *Gov't Code 2105.058*

**Education
Department General
Administrative
Regulations
(EDGAR)**

Note: For information regarding procurement under state law, see the CH policy series regarding Purchasing and Acquisition and the CV series regarding Facilities Construction.

For additional legal requirements applicable to school nutrition procurement, see COA.

EDGAR means the Education Department General Administrative Regulations (34 C.F.R. 75, 76, 77, 79, 81, 82, 84, 86, 97, 98, and 99). *34 C.F.R. 77.1(c)*

Uniform Guidance
(2 C.F.R. 200)

The Department of Education (~~DOE~~ED) adopts the Office of Management and Budget (OMB) Guidance in 2 C.F.R. Part 200 Uniform Guidance, except for 2 C.F.R. 200.102(a) and 2 C.F.R. 200.207(a). Thus, 2 C.F.R. Chapter XXXIV, Part 3474 gives regulatory effect to the OMB guidance and supplements the guidance as needed for the ~~DOE~~ED. *2 C.F.R. 3474.1*

The Uniform Guidance establishes uniform administrative requirements, cost principles, and audit requirements for federal awards to non-federal entities, including school districts, as described in 2 C.F.R. 200.64(j), -69, 101 (Applicability). 2 C.F.R. 200.1 (Definitions), .100

Note: The Uniform Guidance applies to all new grant awards and non-competing continuations (NCCs) made on or after December 26, 2014 (see 2 C.F.R. 200.110).

For more information on EDGAR, the Uniform Guidance, and the federal regulations that apply to federal education grant awards, visit TEA's [EDGAR Materials and Resources](#)¹ and the ~~DOE's~~ED's [EDGAR website](#)² and [Uniform Guidance website](#).³

*General
Compliance*

A district is responsible for complying with all requirements of the federal award. *2 C.F.R. 200.300(b)*

Throughout 2 C.F.R. Part 200 when the word “must” is used it indicates a requirement. Whereas, use of the word “should” or “may” indicates a best practice or recommended approach rather than a requirement and permits discretion. *2 C.F.R. 200.101(b)(1)*

*Disclosures
Conflicts*

A district must disclose in writing any potential conflict of interest to the federal awarding agency (e.g., ~~DOE~~ED) or pass-through entity (e.g., TEA) in accordance with applicable federal awarding agency policy. *2 C.F.R. 200.112*

Crimes

A district must disclose, in a timely manner, in writing to the federal awarding agency or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Failure to make required disclosures can result in any of the remedies described in 2 C.F.R. 200.339 (Remedies for Noncompliance), including suspension or debarment. *2 C.F.R. 200.113*

| | |
|------------------------------|---|
| <i>Procurement Standards</i> | The district must have and use documented procurement procedures, consistent with state, local, and tribal laws and regulations and the standards of 2 C.F.R. 200.318, for the acquisition of property or services required under a federal award or subaward. The district's documented procurement procedures [see Competition, below] must conform to the procurement standards identified in 2 C.F.R. 200.317 through 200.327. |
| District Procedures | |
| Oversight | The district must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. |
| Conflicts of Interest | The district must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. A conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the district may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, districts may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the district. [See BBFA, CAA(LOCAL), CB(LOCAL), DBD] |
| Records | The district must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. [See Pre-procurement Review and Contract Cost and Price, below] <i>2 C.F.R. 200.318(a), (b), (c)(1), (i)</i> [See 2 C.F.R. 200.334 for record retention requirements.] |
| <i>Financial Management</i> | The district's financial management systems, including records documenting compliance with federal statutes, regulations, and the terms and conditions of the federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been |

used according to the federal statutes, regulations, and the terms and conditions of the federal award. [See also 2 C.F.R. 200.450 (Lobbying)]

The district's financial management system must comply with 2 C.F.R. 200.302(b). [See also 2 C.F.R. 200.334 (Retention requirements for records), .335 (Requests for transfer of records), .336 (Methods for collection, transmission and storage of information), and .337 (Access to records)]

2 C.F.R. 200.302

Internal Controls The district must:

1. Establish and maintain effective internal control over the federal award that provides reasonable assurance that the district is managing the award in compliance with federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
2. Comply with the U.S. Constitution, federal statutes, regulations, and the terms and conditions of the award.
3. Evaluate and monitor the district's compliance with statutes, regulations and the terms and conditions of federal awards.
4. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
5. Take reasonable measures to safeguard protected personally identifiable information and other information the federal awarding agency or pass-through entity designates as sensitive or the district considers sensitive consistent with applicable federal, state, local, and tribal laws regarding privacy and responsibility over confidentiality.

2 C.F.R. 200.303

"Internal controls" for districts means processes designed and implemented by districts to provide reasonable assurance regarding the achievement of objectives in the following categories:

1. Effectiveness and efficiency of operations;
2. Reliability of reporting for internal and external use; and

3. Compliance with applicable laws and regulations.

2 C.F.R. 200.1

Competition

All procurement transactions for the acquisition of property or services required under a federal award must be conducted in a manner providing full and open competition consistent with the standards of 2 C.F.R. 200.319 and 200.320 (Methods of procurement to be followed).

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

The district must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this provision preempts state licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

The district must have written procedures for procurement transactions. These procedures must ensure that all solicitations meet the requirements of 2 C.F.R. 200.319(d). [See Procurement Standards, above]

The district must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the district must not preclude potential bidders from qualifying during the solicitation period.

Noncompetitive procurements can only be awarded in accordance with 2 C.F.R. 200.320(c).

2 C.F.R. 200.319

*Procurement
Methods*

The district must have and use documented procurement procedures, consistent with the standards of 2 C.F.R. 200.320 and 200.317 (Procurements by states), 200.318 (General procurement standards), and 200.319 (Competition) for any of the following methods of procurement used for the acquisition of property or services required under a federal award or sub-award. *2 C.F.R. 200.320*

| | |
|---|---|
| <p>Informal Procurement Methods</p> | <p>When the value of the procurement for property or services under a federal award does not exceed the simplified acquisition threshold, as defined in 2 C.F.R. 200.1, or a lower threshold established by a district, formal procurement methods are not required. The district may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the simplified acquisition threshold include:</p> |
| <p><i>Micro-Purchases—Definitions</i></p> | <p>“Micro-purchase” means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a district's small purchases as defined in 2 C.F.R. 200.320.</p> <p>“Micro-purchase threshold” means the dollar amount at or below which a district may purchase property or services using micro-purchase procedures. Generally, the micro-purchase threshold for procurement activities administered under federal awards is not to exceed the amount set by the Federal Acquisition Regulations (FAR) at 48 C.F.R. Part 2, Subpart 2.1 [see below], unless a higher threshold is requested by the district and approved by the cognizant agency for indirect costs.</p> |
| | <p><i>2 C.F.R. 200.1</i></p> <p>Micro-purchase threshold means \$10,000, except as provided by 48 C.F.R. 2.101. <i>48 C.F.R. 2.101</i></p> |
| <p><i>Micro-Purchase Distribution</i></p> | <p>The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. [See the definition of “micro-purchase” above.] To the maximum extent practicable, the district should distribute micro-purchases equitably among qualified suppliers. <i>2 C.F.R. 200.320(a)(1)(i)</i></p> |
| <p><i>Micro-Purchase Awards</i></p> | <p>Micro-purchases may be awarded without soliciting competitive price or rate quotations if the district considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the district. <i>2 C.F.R. 200.320(a)(1)(ii)</i></p> |
| <p><i>Micro-Purchase Thresholds</i></p> | <p>The district is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the district must be authorized or not prohibited under state, local, or tribal laws or regulations. Districts may establish a threshold higher than the federal</p> |

threshold established in the FAR in accordance with 2 C.F.R. 200.320(a)(1)(iv) and (v). *2 C.F.R. 200.320(a)(1)(iii)*

Districts may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of 2 C.F.R. 200.320. The district may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the federal awarding agency and auditors in accordance with 2 C.F.R. 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

1. A qualification as a low-risk auditee, in accordance with the criteria in 2 C.F.R. 200.520 for the most recent audit.
2. An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
3. For public institutions, a higher threshold consistent with state law.

2 C.F.R. 200.320(a)(1)(iv)

Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The district must submit a request with the requirements included in 2 C.F.R. 200.320(a)(1)(iv). The increased threshold is valid until there is a change in status in which the justification was approved. *2 C.F.R. 200.320(a)(1)(v)*

Small Purchases— Procedures

The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the district. *2 C.F.R. 200.320(a)(2)(i)*

Small Purchases— Simplified Acquisition Thresholds

“Simplified acquisition threshold” means the dollar amount below which a district may purchase property or services using small purchase methods. Districts adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under federal awards is set by the FAR at 48 C.F.R. Part 2, Subpart 2.1 [see below]. The district is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no circumstances can this threshold exceed the dollar value established in the FAR

(48 C.F.R. Part 2, Subpart 2.1) for the simplified acquisition threshold. Recipients should determine if local government laws on purchasing apply. *2 C.F.R. 200.1, .320(a)(2)(ii)*

Simplified acquisition threshold means \$250,000, except as provided by 48 C.F.R. 2.101. *48 C.F.R. 2.101*

Formal
Procurement
Methods

When the value of the procurement for property or services under a federal financial assistance award exceeds the simplified acquisition threshold, or a lower threshold established by a district, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with 2 C.F.R. 200.319 or 200.320(c). The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the district determines to be appropriate:

Sealed Bids

A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions [*sic*].

In order for sealed bidding to be feasible, the following conditions should be present:

1. A complete, adequate, and realistic specification or purchase description is available.
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

1. Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local governments, the invitation for bids must be publicly advertised;
2. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

3. All bids will be opened at the time and place prescribed in the invitation for bids, and for local governments, the bids must be opened publicly.
4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
5. Any or all bids may be rejected if there is a sound documented reason.

2 C.F.R. 200.320(b)(1)

Proposals

A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
2. The district must have a written method for conducting technical evaluations of the proposals received and making selections;
3. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the district, with price and other factors considered; and
4. The district may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

2 C.F.R. 200.320(b)(2)

Noncompetitive
Procurement

There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

1. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
2. The item is available only from a single source;
3. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
4. The federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the district; or
5. After solicitation of a number of sources, competition is determined inadequate.

2 C.F.R. 200.320(c)

Cooperative
Purchasing

To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the federal government, the district is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with ~~applied to~~ documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements ~~[sic]~~. *2 C.F.R. 200.318(e)*

~~Affirmative Steps~~
Minority, Small,
and Women's
Businesses

The district must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in items 1 through 5 above.

2 C.F.R. 200.321

*Domestic
Preference*

As appropriate and to the extent consistent with law, the district should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of 2 C.F.R. 200.322 must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this provision:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

2 C.F.R. 200.322

*Pre-procurement
Review*

The district must make available upon request, for the federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

1. The district's procurement procedures or operation fails to comply with the procurement standards in 2 C.F.R. Part 200;
2. The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

3. The procurement, which is expected to exceed the simplified acquisition threshold, specifies a “brand name” product;
4. The proposed contract is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

2 C.F.R. 200.325(b)

*Contract Cost
and Price*

The district must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the district must make independent estimates before receiving bids or proposals.

The district must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the district under 2 C.F.R. Part 200, Subpart E. The district may reference its own cost principles that comply with the federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

2 C.F.R. 200.324

*Contract
Provisions*

The district's contracts must contain the applicable provisions described in appendix II to 2 C.F.R. Part 200. *2 C.F.R. 200.327*

*Suspension and
Debarment*

Districts are subject to the non-procurement debarment and suspension regulations at 2 C.F.R. Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities. *2 C.F.R. 200.214*

*Remedies for
Noncompliance*

If a district fails to comply with the U.S. Constitution, federal statutes, regulations, or the terms and conditions of a federal award, the federal awarding agency or pass-through entity may impose additional conditions, as described in 2 C.F.R. 200.208 (Specific Conditions). If the federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the district or more severe enforcement action by the federal awarding agency or pass-through entity.
2. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate the federal award.
4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a federal awarding agency).
5. Withhold further federal awards for the project or program.
6. Take other remedies that may be legally available.

2 C.F.R. 200.339

Travel Costs

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the district. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the district's non-federally funded activities and in accordance with the district's written travel reimbursement policies.

In the absence of an acceptable, written district policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11 (Travel and Subsistence Expenses; Mileage Allowances), or by the administrator of general services, or by the president (or his or her designee) pursuant to any provisions of such subchapter

must apply to travel under federal awards [48 C.F.R. 31.205–46(a)].

2 C.F.R. 200.475(a), (d)

Property Standards

Federally Owned Property

Title to federally owned property remains vested in the federal government. The district must submit annually an inventory listing of federally owned property in its custody to the federal awarding agency. Upon completion of the federal award or when the property is no longer needed, the district must report the property to the federal awarding agency for further federal agency utilization.

Exempt property means property acquired under a federal award where the federal awarding agency has chosen to vest title to the property to the district without further responsibility to the federal government, based upon the explicit terms and conditions of the federal award. The federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the federal award, title to exempt property acquired under the federal award remains with the federal government.

2 C.F.R. 200.312(a), (c)

Property Trust Relationship

Real property, equipment, and intangible property that are acquired or improved with a federal award must be held in trust by the district as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The federal awarding agency may require the district to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a federal award and that use and disposition conditions apply to the property. *2 C.F.R. 200.316*

Real Property

Subject to the requirements and conditions set forth in 2 C.F.R. 200.311, title to real property acquired or improved under a federal award will vest upon acquisition in the district.

Except as otherwise provided by federal statutes or by the federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the district must not dispose of or encumber its title or other interests.

When real property is no longer needed for the originally authorized purpose, the district must obtain disposition instructions from the federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

1. Retain title after compensating the federal awarding agency an amount determined under 2 C.F.R. 200.311(c)(1).

2. Sell the property and compensate the federal awarding agency an amount determined under 2 C.F.R. 200.311(c)(2).
3. Transfer title to the federal awarding agency or to a third party designated/approved by the federal awarding agency. The district is entitled to be paid an amount calculated by applying the district's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

2 C.F.R. 200.311

Equipment

Title and Use

Subject to the requirements and conditions set forth in 2 C.F.R. 200.313, title to equipment acquired under a federal award will vest upon acquisition in the district. Unless a statute specifically authorizes the federal agency to vest title in the district without further responsibility to the federal government, and the federal agency elects to do so, the title must be a conditional title. Title must vest in the district subject to the following conditions:

1. Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
2. Not encumber the property without approval of the federal awarding agency or pass-through entity.
3. Use and dispose of the property in accordance with the provisions below.

Equipment must be used by the district in the program or project for which it was acquired in accordance with 2 C.F.R. 200.313(c).

Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a federal award, until disposition takes place will, as a minimum, meet the requirements of 2 C.F.R. 200.313(d).

Disposition

If the district is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

When original or replacement equipment acquired under a federal award is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, except as otherwise provided in federal statutes, regulations, or federal awarding agency disposition instructions, the district must request disposition instructions from the federal awarding agency if required by the terms and conditions of the fed-

eral award. Disposition of the equipment will be made as prescribed in 2 C.F.R. 200.313(e), in accordance with federal awarding agency disposition instructions.

2 C.F.R. 200.313

| | |
|---------------------------------|---|
| Supplies | Title to supplies will vest in the district upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal award, the district must retain the supplies for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment under 2 C.F.R. 200.313(e)(2). <i>2 C.F.R. 200.314(a)</i> |
| Intangible Property | Title to intangible property acquired under a federal award vests upon acquisition in the district. The district must use that property for the originally-authorized purpose, and must not encumber the property without approval of the federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 C.F.R. 200.313(e). <i>2 C.F.R. 200.315(a)</i> |
| Direct Grant Programs | The regulations in 34 C.F.R. Part 75 apply to each direct grant program of the DOEED . <i>34 C.F.R. 75.1</i> |
| State-Administered Programs | The regulations in 34 C.F.R. Part 76 apply to each state-administered program of the DOEED . <i>34 C.F.R. 76.1</i> |
| General Education Provision Act | The regulations in 34 C.F.R. Part 81 govern the enforcement of legal requirements under applicable programs administered by the DOEED and implement Part E of the General Education Provisions Act (GEPA). <i>34 C.F.R. 81.1</i> |

¹ TEA EDGAR Materials and Resources:
https://tea.texas.gov/Finance_and_Grants/Grants/EDGAR_Materials_and_Resources/

² ED EDGAR website:
<https://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html>

³ ED Uniform Guidance website:
<https://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html>

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Note: — ~~For additional legal requirements applicable to purchases with federal funds, see CBB. For additional legal requirements applicable to school nutrition procurement, see COA.~~

Note: [For legal requirements applicable to purchases with federal funds, see CBB.](#)

[For required vendor disclosures and contract provisions, including prohibitions, see CHE.](#)

[For provisions pertaining to criminal history record information on contractors, see CJA.](#)

[For legal requirements related to energy savings performance contracts, see CL.](#)

[For information on procuring school buses, see CNB.](#)

[For legal requirements applicable to school nutrition procurement, including produce, with federal funds, see COA.](#)

[For information regarding construction of school facilities, see CV series.](#)

Board Authority

A[The](#) board may adopt rules and procedures for the acquisition of goods and services. *Education Code 44.031(d)*

Delegation of Authority

A[The](#) board may, [as appropriate](#), delegate its authority regarding an action authorized or required ~~to be taken by a district~~ by Education Code Chapter 44, Subchapter B, to [be taken by a district to](#) a designated person, representative, or committee.

A[The](#) board may not delegate the authority to act regarding an action authorized or required to be taken by the board by Education Code Chapter 44, Subchapter B.

Disaster ~~Exception~~ [Delegation](#) [ion](#)

Notwithstanding any other provision of the Education Code, in the event of a catastrophe, emergency, or natural disaster affecting a district, the board may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under Education Code Chapter 44, Subchapter B if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.

Education Code 44.0312

Purchases Valued at or Above \$50,000

[Methods](#)

[Except as provided by Education Code Chapter 44, Subchapter B](#), all district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period, shall be made by the method, [of the following methods](#), that provides the best value for a district:

1. Competitive bidding for services other than construction services.
2. Competitive sealed proposals for services other than construction services.
3. A request for proposals for services other than construction services.
4. An interlocal contract.
5. [A method provided by Government Code Chapter 2269 for construction services \[see CV series\];](#)
- ~~5-6.~~ The reverse auction procedure as defined by Government Code 2155.062(d).
- ~~6-7.~~ The formation of a political subdivision corporation under Local Government Code 304.001 (purchase of electricity).

Education Code 44.031(a)

Exceptions

Emergency
Damage or
Destruction

If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. *Education Code 44.031(h)*

Sole Source

Without complying with Education Code 44.031(a) above, a district may purchase an item that is available from only one source, including:

1. An item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly.
2. A film, manuscript, or book.
3. A utility service, including electricity, gas, or water.
4. A captive replacement part or component for equipment.

The exceptions above do not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.

Education Code 44.031(j)–(k)

~~[See COA for requirements applicable to school nutrition purchases, including produce, using federal funds.]~~

~~**Note:** Regarding construction of school facilities, see CV generally; CVA for~~

Competitive Bidding

Except to the extent prohibited by other law and to the extent consistent with Education Code Chapter 44, Subchapter B, a district may use competitive bidding to select a vendor as authorized by Education Code 44.031(a)(1).

A district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Education Code 44.031(b) [see Contract Selection Factors, below].

Except as provided below, Local Government Code Chapter 271, Subchapter B (Competitive Bidding on Certain Public Works Contracts) does not apply to a competitive bidding process under this policy.

Local Government Code Sections 271.026 (Opening of Bids), 271.027(a) (Award of Contract), and 271.0275 (Safety Record of Bidder Considered) apply to a competitive bidding process under Education Code Chapter 44, Subchapter B. [See CVA for these requirements.]

Education Code 44.0351

Competitive Sealed Proposals

In selecting a vendor through; ~~CVB for~~ competitive sealed proposals as authorized by Education Code 44.031(a)(2), a district shall follow the procedures prescribed below.

Request for Proposals

The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

Opening Proposals

The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Selection

The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.

Education Code 44.0352Interlocal
Contracts

“Interlocal contract” means a contract or agreement made under Government Code Chapter 791 (Interlocal Cooperation Act). A district may contract or agree with another local government or a federally recognized Indian tribe, as listed by the U.S. secretary of the interior under 25 U.S.C. 479a-1, whose reservation is located within the boundaries of this state to perform governmental functions and services in accordance with Government Code Chapter 791. A district may agree with another local government and with the state or a state agency, including the comptroller, to purchase goods and services. Gov’t Code 791.003(2), .011(a), .025(a)

An interlocal contract must:

1. Be authorized by the governing body of each party to the contract;
2. State the purpose, terms, rights, and duties of the contracting parties; and
3. Specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. An interlocal contract may be renewed. Notwithstanding item 2 above, an interlocal contract may have a specified term of years.

Gov’t Code 791.011(d)–(f), (i)

A district may agree with another local government, including a nonprofit corporation that is created and operated to provide one or

more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods. This provision does not apply to services provided by firefighters, police officers, or emergency medical personnel. Gov't Code 791.025(b)

A district that purchases goods and services under Government Code 791.025 satisfies the requirement to seek competitive bids for the purchase of the goods and services. Gov't Code 791.025(c); Atty. Gen. Op. JC-37 (1999)

Reverse Auction

A district that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the district and fair to vendors. Local Gov't Code 271.906(b)

"Reverse auction procedure" means:

1. A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or
2. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

Gov't Code 2155.062(d)

Site-Based Purchasing

If a purchase is made at the campus level in a district with a student enrollment of 180,000 or more that has formally adopted a site-based decision-making plan under Education Code Subchapter F, Chapter 11 [see BQ series], that delegates purchasing decisions to the campus level, Education Code 44.031 applies only to the campus and does not require the district to aggregate and jointly award purchasing; ~~CVC and CVD for contracts using a construction manager; CVE for design/build contracts; and CVF for job order contracts for minor repairs/alterations.~~ A district that adopts site-based purchasing under this provision shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not intended or used to avoid the requirement that a district aggregate purchases under Education Code 44.031(a). Education Code 44.031(m)

Contract Selection
Factors

~~In awarding~~ Except as provided by [Education Code Chapter 44, Subchapter B, in determining to whom to award](#) a contract, ~~a~~ [the](#) district shall consider:

1. [The](#) purchase price.
2. The reputation of the vendor and of the vendor's goods or services.
3. The quality of the vendor's goods or services.
4. The extent to which the goods or services meet the district's needs.
5. The vendor's past relationship with the district.
6. The impact on the ability of the district to comply with laws [and rules](#) relating to historically underutilized businesses.
7. The total long-term cost to the district to acquire the [vendor's](#) goods or services.
8. For a contract ~~that is not~~ for [goods and services, other than](#) goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.
9. Any other relevant factor specifically listed in the request for bids or proposals.

Education Code 44.031(b)

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code 271.9051. This ~~section~~ [provision](#) does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153. *Education Code 44.031(b-1)*

The factors listed above are the only criteria that may be considered by a district in its decision to award a contract. *R.G.V. Vending v. Weslaco Indep. Sch. Dist.*, 995 S.W.2d 897 (Tex. App.—Corpus Christi 1999, no pet.)

PreferencesAgricultural
Products

A district that purchases agricultural products shall give preference to those produced, processed, or grown in Texas if the cost to the district is equal and the quality is equal. If agricultural products produced, processed, or grown in Texas are not equal in cost and quality to other products, the district shall give preference to agricultural products produced, processed, or grown in other states of the United States, if the cost and quality of the U.S. and foreign products are equal.

“Agricultural products” includes textiles and other similar products.

“Processed” means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form.

A district may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in Texas.

Vegetation for
Landscaping

A district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the district is equal and the quality is equal.

Education Code 44.042

[For legal requirements applicable to school nutrition procurement, including produce and agricultural products, with federal funds, see COA.]

Recycled
Products

A district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality and the average price of the product is not more than ten percent greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules. 30 TAC 328.203

Subchapter K of 30 Administrative Code (Governmental Entity Recycling and Purchasing of Recycled Materials) does not apply to a district with a student enrollment of less than 10,000 students. 30 TAC 328.204(a)

A district regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

1. Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;
2. Encourage the use of products made of recycled materials;
and

3. Ensure to the maximum extent economically feasible that the district purchases products that may be recycled when they have served their intended use.

In developing new procedures and specifications, the district shall encourage the use of recycled products and products that may be recycled or reused.

Health and Safety Code 361.426(b)–(c)

Bidder's Place of Business

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code Section 271.9051. This provision does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. 153. Education Code 44.031(b-1)

Notice Publication

Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. Education Code 44.031(g)

Electronic Bids or Proposals

A district may receive bids or proposals under Education Code Chapter 44 through electronic transmission if the board adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

Notwithstanding any other provision of Education Code Chapter 44, an electronic bid or proposal is not required to be sealed. A provision of Education Code Chapter 44 that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted by the board.

Education Code 44.0313

Right to Work

While a district is engaged in procuring goods and services or awarding a contract, or overseeing procurement or construction for a public work or public improvement, a district:

1. May not consider whether a vendor is a member of or has another relationship with any organization; and
2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

Education Code 44.043

Contract with Person Indebted to District

The board by resolution may establish regulations permitting the district to refuse to enter into a contract or other transaction with a person indebted to the district. It is not a violation of Education Code Chapter 44, Subchapter B (Purchases; Contracts) for a district, under regulations adopted under this provision, to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the district.

"Person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the district requiring approval by the board.

Education Code 44.044

Out-of-State Bidders

A ~~board shall~~ district may not award a governmental contract ~~for services or for purchase of supplies, materials, or equipment to a nonresident bidder whose principal place of business is not in this state,~~ unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid ~~a~~ the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located, or ~~a~~ the state in which a majority of the manufacturing relating to the contract will be performed. *Gov't Code 2252.001-.002*

This requirement ~~shall~~ does not apply to a contract involving federal funds. A district shall ~~rely on~~ use the information published by the comptroller ~~in evaluating the bids of~~ under Government Code 2252.003 (Publication of Other State's Laws on Contracts) to evaluate the bid of a nonresident bidder. *Gov't Code 2252.003-.004*

Required Contract Provisions

No-Israel-Boycott

A district may ~~not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it does not boycott Israel and will not during the term of the contract.~~

~~The requirement above applies only to a contract that:~~

1. ~~Is between a district and a company with ten or more full-time employees; and~~
2. ~~Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the district.~~

~~Gov't Code 2271.002~~

~~"Company" has the meaning assigned by Government Code 808.001, except that the term does not include a sole proprietorship. Gov't Code 2271.001(2)~~

Retention of
Contracting
Information
Application

~~These provisions apply to a contract that:~~

3. ~~Has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the district; or~~
4. ~~Results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the district in a fiscal year of the district.~~

~~A board may not accept a bid for a contract described above or award the contract to an entity that the board has determined has knowingly or intentionally failed to comply with Government Code Chapter 552, Subchapter J (Additional Provisions Relating to Contracting Information) in a previous bid or contract described above unless the board determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of that subchapter. [For additional information and requirements, see GBA and GBAA.]~~

Requirements

~~A contract described above must require a contracting entity to:~~

5. ~~Preserve all contracting information related to the contract as provided by the records retention requirements applicable to the district for the duration of the contract;~~
6. ~~Promptly provide to the district any contracting information related to the contract that is in the custody or possession of the entity on request of the district; and~~
7. ~~On completion of the contract, either:~~
 - a. ~~Provide at no cost to the district all contracting information related to the contract that is in the custody or possession of the entity; or~~
 - b. ~~Preserve the contracting information related to the contract as provided by the records retention requirements applicable to the district.~~

*~~Bid and Contract
Language~~*

~~Except as described at Exception, below, a bid for a contract described above and the contract must include the following statement: "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter."~~

*~~Notice of
Noncompliance~~*

~~A board that is the party to a contract described above shall provide notice to the entity that is a party to the contract if the entity fails to comply with a requirement of Government Code Chapter 552, Subchapter J applicable to the entity. The notice must:~~

- ~~8.— Be in writing;~~
- ~~9.— State the requirement that the entity has violated; and~~
- ~~10.— Unless the exception described below applies, advise the entity that the board may terminate the contract without further obligation to the entity if the entity does not cure the violation on or before the tenth business day after the date the board provides the notice.~~

*~~Contract
Termination~~*

~~Except as provided below, a governmental body may terminate a contract described above if:~~

- ~~11.— The board provides the required notice to the entity that is party to the contract;~~
- ~~12.— The contracting entity does not cure the violation in the prescribed period;~~
- ~~13.— The board determines that the contracting entity has intentionally or knowingly failed to comply with a requirement of Government Code Chapter 552, Subchapter J; and~~
- ~~14.— The board determines that the entity has not taken adequate steps to ensure future compliance with the requirements of that subchapter.~~

~~An entity has taken adequate steps to ensure future compliance with Government Code Chapter 552, Subchapter J if:~~

- ~~15.— The entity produces contracting information requested by the board that is in the custody or possession of the entity not later than the tenth business day after the date the board makes the request; and~~
- ~~16.— The entity establishes a records management program to enable the entity to comply with Government Code Chapter 552, Subchapter J.~~

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| Exception | <p>A board may not terminate a contract under these provisions if the contract is related to the purchase or underwriting of a public security, the contract is or may be used as collateral on a loan, or the contract's proceeds are used to pay debt service of a public security or loan.</p> <p>Gov't Code 552.371(a), .372-.374 [See GBA]</p> |
| Disclosure of Interested Parties | <p>A district may not enter into a contract described below with a business entity unless the business entity submits a disclosure of interested parties to the district at the time the business entity submits the signed contract to the district.</p> <p>The requirement above applies only to a contract of a district that:</p> <p>17. Requires an action or vote by the board before the contract may be signed;</p> <p>18. Has a value of at least \$1 million; or</p> <p>19. Is for services that would require a person to register as a lobbyist rely on information published under Government Code Chapter 305.</p> <p>Gov't Code 2252.908</p> <p>A contract does not require an action or vote by the board if the board has legal authority to delegate to its staff the authority to execute the contract, the board has delegated this authority, and the board does not participate in the selection of the business entity with which the contract is entered into. 1 TAC 46.1(c)</p> |
| Exclusions | <p>The disclosure requirement does not apply to a contract with:</p> <p>20. A publicly traded business entity, including a wholly owned subsidiary of the entity;</p> <p>21. An electric utility, as defined by Utilities Code 31.002; or</p> <p>22. A gas utility, as defined by Utilities Code 121.001.</p> <p>Gov't Code 003 to meet the requirements of Government Code 2252.908(c)(4)-(6) 002. Gov't Code 2252.003-.004</p> |
| Required Form | <p>The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (TEC) that includes a list of each interested party for the contract of which the contracting business entity is aware; and a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is in substantially the form set out in Government Code 2252.908(e)(2). Gov't Code 2252.908(e); 1 TAC 46.5(a)</p> |

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| | <p>The certification of filing and the completed disclosure of interested parties form generated by TEC's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the district that is the party to the contract for which the form is being filed. 1 TAC 46.5(b)</p> |
| <p>Deadline</p> | <p>A district that receives a completed disclosure of interested parties form and certification of filing shall notify TEC, in an electronic format prescribed by TEC, of the receipt of those documents not later than the 30th day after the date the board receives the disclosure. 1 TAC 46.5(c); Gov't Code 2252.908(f)</p> |
| <p>Contract Changes</p> | <p>The disclosure requirements do not apply to a change made to an existing contract, including an amendment, change order, or extension of a contract except as set out below.</p> <p>The disclosure requirements apply to a change made to an existing contract, including an amendment, change order, or extension of a contract if:</p> <p>23. A disclosure of interested parties form was not filed for the existing contract; and either the changed contract requires an action or vote by the board or the value of the changed contract is at least \$1 million; or</p> <p>24. The business entity submitted a disclosure of interested parties form to the district that is a party to the existing contract; and either there is a change to the disclosure; or the changed contract requires an action or vote by the board; or the value of the changed contract is at least \$1 million greater than the value of the existing contract.</p> <p>1 TAC 46.4</p> |
| <p>Definitions</p> | <p>"Contract" means a contract between a board and a business entity at the time it is voted on by the board or at the time it binds the board, whichever is earlier, and includes an amended, extended, or renewed contract. 1 TAC 46.3(a)</p> <p>"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. The term includes an entity through which business is conducted with a district, regardless of whether the entity is a for-profit or nonprofit entity, and does not include a governmental entity or state agency. Gov't Code 2252.908(a)(1); 1 TAC 46.3(b)</p> <p>"Interested party" means a person who has a controlling interest in a business entity with whom a district contracts or who actively participates in facilitating the contract or negotiating the terms of the</p> |

~~contract, including a broker, intermediary, adviser, or attorney for the business entity. Gov't Code 2252.908(a)(3); 1 TAC 46.3(d), (e)~~

~~“Controlling interest” means:~~

~~25. An ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds ten percent;~~

~~26. Membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than ten members; or~~

~~27. Service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. This subsection does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.~~

~~1 TAC 46.3(e)~~

~~“Signed” includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature. 1 TAC 46.3(f)~~

~~“Value” of a contract is based on the amount of consideration received or to be received by a business entity from a board under the contract. 1 TAC 46.3(g)~~

~~[See BBFA for additional conflict of interest disclosures.]~~

~~Contract with Person Indebted to District~~

~~A board may, by resolution, establish regulations permitting a school district to refuse to enter into a contract or other transaction with a person indebted to the school district. A district may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the district.~~

~~The term “person” includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that seeks to enter into a contract or other transaction with a district requiring board approval.~~

~~Education Code 44.044~~

~~Notice Publication~~

~~Notice of when and where bids or proposals or the responses to a request for qualifications will be received and opened shall be published in the county where a district’s central administrative office is located, once a week for at least two weeks prior to the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is no newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county~~

Electronic Bids or Proposals

~~seat of the county in which a district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. Education Code 44.031(g)~~

~~A district may receive bids or proposals through electronic transmission if the board adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.~~

~~An electronic bid or proposal is not required to be sealed. A provision of Education Code Chapter 44 that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted by the board.~~

~~Education Code 44.0313~~

“Governmental contract” means a contract awarded by a governmental entity, including a public school district, for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.

“Resident bidder” refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Gov't Code 2252.001

Professional Services

~~The purchasing requirements of Education Code 44.031 do~~ does not apply to a contract for professional services rendered, including the services of an architect, attorney, certified public accountant, engineer, or fiscal agent. A district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, (Professional Services Procurement Act) (see below), in lieu of the methods provided by Education Code 44.031. Education Code 44.031(f)

~~Education Code 44.031(f)~~

~~An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. Gov't Code 791.011(h)~~

Professional
Services
Procurement Act
Selection

A district may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.003(a)*

Definition

~~“~~Professional services~~”~~ means services:

1. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing;
2. Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse; or
3. Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Occupations Code [Chapter 1053](#).

Gov't Code 2254.002

[\[For specific information on procuring architectural or engineering services, see CV.\]](#)

Contingent Fee
Contract for Legal
Services

Government Code Chapter 2254, Subchapter C provides the manner in which and the situations under which a district may compensate a public contractor under a contingent fee for legal services. That subchapter does not apply to a contract for legal services:

1. [Provided to a district under Government Code Chapter 403, Subchapter M; or](#)
- ~~1-2.~~ [Entered into under Tax Code 6.30 \(delinquent tax collection\) \[see CCGA\(LEGAL\)\] or Government Code 1201.027 \(issuance of public securities\); \[see CCA\(LEGAL\)\],](#) except that Government Code sections 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract.

Gov't Code 2254.102

A district may select an attorney or law firm to award a contingent fee contract only in accordance with Government Code

2254.003(a) ([Professional Services Procurement Act](#)) [see Selection, above] and Government Code 2254.1032. ~~Gov't Code 2254.1032(a)~~

~~Emergency Damage or Destruction~~

~~If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and a~~

In procuring legal services under a contingent fee contract, a district shall:

1. Select a well-qualified attorney or law firm on the basis of demonstrated competence, qualifications, and experience in the requested services; and
2. Attempt to negotiate a contract with that attorney or law firm for a fair and reasonable price.

Gov't Code 2254.1032

Specific Purchases

~~board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. Education Code 44.031(h)~~

Computers

A district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts ~~with the DIR~~entered into in accordance with Government Code Chapter 2054 or 2157. *Education Code 44.031(i)*

Automated Information System

A district may purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method ~~listed~~described above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.391*

Automated External Defibrillators

A ~~school~~district that purchases or leases an automated external defibrillator, (AED), as defined by Health and Safety Code 779.001, shall ensure that the ~~defibrillator~~AED meets standards established by the federal Food and Drug Administration. *Education Code 44.047*

Sole Source

~~Compliance with Education Code 44.031 is not required for purchases that are available from only one source, including:~~

~~An item for which competition is precluded because of (a patent, copyright, secret process, or monopoly.)~~

~~1. A film, manuscript, or book.~~

~~2.1. A utility service, including electricity, gas, or water.~~

~~3.1. A captive replacement part or component for equipment.~~

~~The sole source exception shall not apply to mainframe data processing equipment and peripheral attachments with a single item purchase price in excess of \$15,000.~~

~~Education Code 44.031(j)–(k)~~

Insurance

A contract for the purchase of insurance is not a contract for professional services. A district must award such a contract using one of the purchase of personal property and shall be made methods in accordance with Education Code 44.031. ~~Education Code 44.031; Atty. Gen. Op. DM-347 (1995) 418 (1996)~~

Multiyear Contracts

A district may execute an insurance contract for a period longer than 12 months, if the contract ~~contains either or both of the provisions described at~~ complies with Local Government Code 271.903(a) [see Commitment of Current Revenue, below-]. If a district executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the district will be executing a new insurance contract. *Atty. Gen. Op. DM-418 (1996)*

Competitive Bidding

~~Except to the extent prohibited by other law and to the extent consistent with Education Code Chapter 44, Subchapter B, a school district may use competitive bidding to select a vendor as authorized by Education Code 44.031(a)(1).~~

Other Purchasing Methods

~~A district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Education Code 44.031(b) [see Factors, above].~~

~~Except as provided below, Local Government Code Chapter 271, Subchapter B does not apply to a competitive bidding process under this policy.~~

~~Education Code 44.0351~~

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| Opening Bids | <p>Bids may be opened only by a board at a public meeting or by an officer or employee of a district at or in an office of the district. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. <i>Local Gov't Code 271.026</i></p> <p>A board shall have the right to reject any and all bids. <i>Local Gov't Code 271.027(a)</i></p> |
| Safety Record | <p>In determining who is a responsible bidder, a board may take into account the safety record of the bidder; of the firm, corporation, partnership, or institution represented by the bidder; or of anyone acting for such firm, corporation, partnership, or institution, provided that:</p> <p>4.—The board has adopted a written definition and criteria for accurately determining the safety record of the bidder.</p> <p>5.—The board has given notice in the bid specifications that the safety record of a bidder may be considered in determining the bidder's responsibility.</p> <p>6.—The determinations are not arbitrary and capricious.</p> <p><i>Local Gov't Code 271.0275</i></p> |
| Identical Bids | <p>If a district receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, it shall select only one bidder from the identical bids.</p> <p>If only one of the bidders submitting identical bids is a resident of a district, that bidder shall be selected. If two or more such bidders are residents of a district, one shall be selected by the casting of lots. In all other cases, one of the identical bids shall be selected by the casting of lots.</p> <p>A board shall prescribe the manner of casting lots and shall be present when the lots are cast. All qualified bidders or their representatives may be present at the casting of lots.</p> <p><i>Local Gov't Code 271.901</i></p> |
| Competitive Sealed Proposals | <p>In selecting a vendor through competitive sealed proposals as authorized by Education Code 44.031(a)(2), a school district shall follow the procedures prescribed below.</p> |
| Request for Proposals | <p>The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.</p> |

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| Opening Proposals | <p>The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.</p> |
| Selection | <p>The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.</p> |
| Best Value Determination | <p>In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.</p> <p><i>Education Code 44.0352</i></p> |
| Interlocal Agreements | <p>To increase efficiency and effectiveness, a district may contract or agree with other local governments and with state agencies, including the comptroller, to perform some of its purchasing functions. Gov't Code 791.001, .011, .025</p> <p>An interlocal contract must be authorized by a board and the governing body of each contracting party; must state the purpose, terms, rights, and duties of the contracting parties; and must specify that each party paying for the performance of governmental functions or services shall make those payments from current revenues available to the paying party.</p> <p>An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. The contract may be renewed and may have a specified term of years.</p> <p><i>Gov't Code 791.011(d) (f), (i)</i></p> <p>A district may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and services reasonably required for the installation, operation, or maintenance of the goods. Such an agreement may not, however, apply</p> |

~~to services provided by firefighters, police officers, or emergency medical personnel.~~

~~A district that purchases goods and services by agreement with another local government or with the state or state agency satisfies the requirement to seek competitive bids for the purchase of goods and services.~~

~~Gov't Code 791.025(b)-(c); Atty. Gen. Op. JC 37 (1999)~~

~~A district may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000 unless a person designated by the district certifies in writing that:~~

- ~~7. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or~~
- ~~8. The plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.~~

~~"Purchasing cooperative" means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.~~

~~Gov't Code 791.011(j)~~

State Purchasing Program

~~Purchasing services performed for a district by~~ The comptroller shall establish a program by which the comptroller performs purchasing services for local governments. The services must include:

1. The extension of state contract prices to ~~a district~~participating local governments when the comptroller considers it feasible.
2. Solicitation of bids on items desired by ~~a district~~local governments if the solicitation is considered feasible by the comptroller and is desired by the ~~district~~local government.
3. Provision of information and technical assistance to ~~a district-~~local governments about the purchasing program.

The comptroller may charge a ~~district its~~participating local government an amount not to exceed the actual costs incurred by the comptroller in providing purchasing services to the local government under the program.

Local Gov't Code 271.082

District
Requirements
Participation

A district may participate in the purchasing program, including participation in purchases that use the reverse auction procedure, by filing with the comptroller a resolution adopted by the board requesting that the district be allowed to participate on a voluntary basis, and to the extent the comptroller deems feasible, and stating that the ~~board shall~~district will:

1. Designate an official to act for the district in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the board will direct the decisions of the representative;
- ~~2. Direct the decisions of its representative.~~
- ~~3.~~2. Be responsible for:
 - a. Submitting requisitions to the ~~commission~~comptroller under any contract(s) ~~and for payment directly to the vendor; and; or~~
 - b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse auction purchase, and electronically sending to the comptroller reports on actual purchases ~~made under this provision that provide the information and are sent at the times required by the comptroller~~;
3. Be responsible for making payment directly to the vendor;
4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

~~A purchase made through participation in this program meets any state requirement~~A district that purchases an item under a state contract or under a reverse auction procedure, sponsored by the comptroller satisfies any state law requiring the district to seek competitive bids for the purchase of the item.

Local Gov't Code 271.083

Multiple Award
Contract Schedule

The comptroller shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government or any other governmental entity in any state. *Gov't Code 2155.502(a)*

A district may purchase goods or services directly from a vendor under a contract listed on a schedule ~~developed under Government Code Chapter 2155, Subchapter I.~~ A district contracting for the purchase of an automated information system under a contract listed on a schedule shall comply with Government Code 2157.068(e-1) (Purchase of Information Technology Commodity

Items) [see Automated Information System, above]. ~~An~~A purchase authorized ~~purchase by this provision~~ satisfies any requirement of state law relating to competitive bids or proposals.

The price listed for a good or service under a multiple award contract is a maximum price. A district may negotiate a lower price for goods or services under a contract listed on a schedule developed under Government Code Chapter 2155, Subchapter I.

Gov't Code 2155.504

Cooperative
Purchasing
Program

A district may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state. ~~If~~ A district ~~does so, it~~ that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative organization stating that the district will:

1. Designate a person to act under the direction of, or on behalf of the district in all matters relating to the program;
2. Make payments to another participating local government or local cooperative organization or directly to a vendor under a contract made under these provisions, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and
- ~~3.~~ 3. ~~Be responsible for the vendor's compliance.~~ If a district participates relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative purchasing program, it or organization.

A district that purchases goods or services under these provisions satisfies any state law requiring ~~it~~ the district to seek competitive bids for the purchase of the goods or services.

Local Gov't Code 271.102; Atty. Gen. Op. JC-37 (1999)

Cooperative
Purchasing
~~Contract-Related~~
Fee Fees

A ~~school~~ district that enters into a purchasing contract valued at \$25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Local Government Code Chapter 271, Subchapter F (cooperative purchasing program), or under any other cooperative purchasing program authorized for school districts by law shall document any contract-related fee, including any management fee, and the purpose of each fee under the contract.

The amount, purpose, and disposition of any fee described above must be presented in a written report and submitted annually in an open meeting of the board. The written report must appear as an agenda item. The commissioner of education may audit the written report.

Education Code 44.0331

~~Reverse Auction~~

~~A district that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the district and fair to vendors. Local Gov't Code 271.906(b)~~

~~Reverse auction procedure means:~~

~~1. A real time bidding process usually lasting less than one hour and taking place at a previously scheduled time and internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or~~

~~2.1. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.~~

~~Gov't Code 2155.062(d)~~

Commitment of Current Revenue

~~3. If a contract for the acquisition, including lease, of real or personal property is a commitment of a district's current revenue only, provided the contract contains either or both of the following provisions: retains to the board the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.~~

is conditioned on a best efforts attempt by the board to obtain and appropriate funds for payment of the contract, or contains both the continuing right to terminate and the best efforts conditions, the contract is a commitment of a district's current revenue only. Local Gov't Code 271.903.

Change Orders

~~If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.~~

~~The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.~~

~~A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.~~

~~*Education Code 44.0411*~~

Energy or Water Conservation Measures

~~A district may contract for energy or water conservation measures. Such a contract shall be let according to the procedures established for professional services by Government Code 2254.004.~~

~~A board shall establish a long-range energy plan to reduce a district's annual electric consumption by five percent beginning with the 2008 state fiscal year and consume electricity in subsequent fiscal years in accordance with the district's energy plan.~~

~~*Education Code 44.901-.902* [See policy CL for legal requirements pertaining to such contracts and plans.]~~

Recycled Products

~~A district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. A district regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:~~

- ~~1. Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials.~~
- ~~2. Encourage the use of products made of recycled materials.~~
- ~~3.1. Ensure to the maximum extent economically feasible that the district purchases products that may be recycled when they have served their intended use.~~

~~In developing new procedures and specifications, the district shall encourage the use of recycled products and products that may be recycled or reused.~~

~~The Texas Commission on Environmental Quality (TCEQ) by order shall exempt from compliance with these provisions a district with a student enrollment of fewer than 10,000 students.~~

~~*Health and Safety Code 361.426*~~

Agricultural Products

If the cost and quality are equal, a district shall give preference in purchasing to agricultural products, including textiles and other similar products, that are produced, processed, or grown in Texas. ~~“Processed” means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form. If Texas agricultural products are not equal in cost and quality to other agricultural products, a district shall give preference in purchasing to agricultural products produced, processed, or grown in the United States, if the cost and quality of the U.S. and foreign products are equal.~~

~~A district may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in Texas.~~

Vegetation for Landscaping

If cost is equal and the quality is not inferior, a district shall give preference to Texas vegetation when it purchases vegetation for landscaping purposes.

~~Education Code 44.042~~

Bus Purchase or Lease

Each contract proposed for the purchase or lease of one or more school buses, including a lease with an option to purchase, shall be submitted to competitive bidding when the contract is valued at \$20,000 or more. ~~Education Code 44.031(l) [See CNB]~~

Right to Work

~~4.1. While engaged in procuring goods and services or awarding a contract, a district: May not consider whether a vendor is a member of or has another relationship with any organization; and~~

~~5.1. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.~~

~~Education Code 44.043~~

Lobbying Restriction— Tobacco Education Grant Funds

A district may not spend grant funds it receives from the Permanent Fund for Tobacco Education and Enforcement to pay:

- ~~6. Lobbying expenses incurred by the district;~~
- ~~7. A person or entity that is required under Government Code Chapter 305 to register as a lobbyist with the Texas Ethics Commission;~~
- ~~8. Any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity of a registered lobbyist (as described in item 2); or~~

~~9. A person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.~~

~~Gov't Code 403.1067~~

[For provisions regarding change orders, see CV.](#)

Criminal History[Offenses](#)

~~For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).~~

Impermissible Practices

~~A board member~~[An officer](#), employee, or agent ~~shall not, of a district commits an offense if the person~~ with criminal negligence, ~~make makes~~ or ~~authorize~~[authorizes](#) separate, sequential, or component purchases to avoid the ~~purchasing~~ requirements ~~set out in~~[of](#) Education Code 44.031-~~(a) or (b)~~. ~~An officer or employee shall not knowingly violate Education Code 44.031 in any other manner of-~~[fense under this provision is a Class B misdemeanor and is an of-](#)[fense involving moral turpitude.](#)

“Component purchases” means purchases of the component parts of an item that in normal purchasing practices would be made in one purchase. “Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be made in one purchase. “Sequential purchases” means purchases, [made](#) over a period, of items that in normal purchasing practices would be made in one purchase.

~~Violation of~~[Education Code 44.032\(a\)–\(b\)](#)

[An officer, employee, or agent of a district commits an offense if the person with criminal negligence violates Education Code 44.031\(a\) or \(b\) other than by conduct described by Education Code 44.032\(b\). An offense under this provision is a Class B misdemeanor and \[is\]\(#\) an offense involving moral turpitude, ~~conviction.~~ \[Ed-\]\(#\)\[ucation Code 44.032\\(c\\)\]\(#\)](#)

[An officer or employee of ~~which shall result~~a district commits an of-](#)[fense if the officer or employee knowingly violates Education Code 44.031, other than by conduct described by Education Code 44.032\(b\) or \(c\). An offense under this provision is a Class C mis-](#)[demeanor. Education Code 44.032\(d\)](#)

[Removal from Office](#)

[The final conviction of a person other than a trustee of a district for an offense under Education Code 44.032\(b\) or \(c\) above results in the immediate removal from office or ~~dismissal from~~ employment-](#)[of that person. A ~~board member~~trustee who is convicted of a viola-](#)[tion of this provision is an offense under Education Code 44.032 is](#) considered to have committed official misconduct [for purposes of](#)

Local Government Code Chapter 87, and is subject to removal as provided by that chapter and Texas Constitution Article V, Section 24. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in Texas, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision. ~~[See BBC]~~ of the state.
Education Code 44.032(e)

~~Education Code 44.032~~

Injunction

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which atthe district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this ~~subsection~~provision is entitled to reasonable attorney's fees as approved by the court. *Education Code 44.032(f)*

Prohibitions

~~Entertainment
Event Contracts~~

~~A person, including a board, may not include a provision in a contract related to a parade, concert, or other entertainment event paid for in whole or in part with public funds that prohibits or would otherwise prevent the disclosure of information relating to the receipt or expenditure of public or other funds by a board for the event. A contract provision that violates Government Code 552.104(c) is void. Gov't Code 552.104(c) [See GBA for information related to competition or bidding.]~~

~~Taxpayer Resource
Transactions~~

~~A district may not enter into a taxpayer resource transaction with an abortion provider or an affiliate of an abortion provider. Gov't Code 2272.003(a)~~

~~"Taxpayer resource transaction" means a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity receives something of value in return.~~

~~"Affiliate" means a person or entity who enters into with another person or entity a legal relationship created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:~~

~~10.— Common ownership, management, or control between the parties to the relationship;~~

~~11.— A franchise granted by the person or entity to the affiliate; or~~

~~12. The granting or extension of a license or other agreement authorizing the affiliate to use the other person's or entity's brand name, trademark, service mark, or other registered identification mark.~~

~~Gov't Code 2272.001(3), (5)~~

Prohibited
Contracts

~~For provisions regarding other prohibited contracts, see CV(LEGAL).~~

Note: For additional legal requirements applicable to purchases with federal funds, see CBB.

Required Vendor Disclosures

Disclosure of Interested Parties

A district may not enter into a contract described below with a business entity unless the business entity submits a disclosure of interested parties to the district at the time the business entity submits the signed contract to the district.

The requirement above applies only to a contract of a district that:

1. Requires an action or vote by the board before the contract may be signed;
2. Has a value of at least \$1 million; or
3. Is for services that would require a person to register as a lobbyist under Government Code Chapter 305.

Gov't Code 2252.908

A contract does not require an action or vote by the board if the board has legal authority to delegate to its staff the authority to execute the contract, the board has delegated this authority, and the board does not participate in the selection of the business entity with which the contract is entered into. 1 TAC 46.1(c)

Exclusions

The disclosure requirement does not apply to a contract with:

1. A publicly traded business entity, including a wholly owned subsidiary of the entity;
2. An electric utility, as defined by Utilities Code 31.002; or
3. A gas utility, as defined by Utilities Code 121.001.

Gov't Code 2252.908(c)(4)–(6)

Required Form

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (TEC) that includes a list of each interested party for the contract of which the contracting business entity is aware; and a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury that is in substantially the form set out in Government Code 2252.908(e)(2). Gov't Code 2252.908(e); 1 TAC 46.5(a)

The certification of filing and the completed disclosure of interested parties form generated by TEC's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the district that is the party to the contract for which the form is being filed. 1 TAC 46.5(b)

Deadline A district that receives a completed disclosure of interested parties form and certification of filing shall notify TEC, in an electronic format prescribed by TEC, of the receipt of those documents not later than the 30th day after the date the board receives the disclosure. 1 TAC 46.5(c); Gov't Code 2252.908(f)

Contract Changes The disclosure requirements do not apply to a change made to an existing contract, including an amendment, change order, or extension of a contract except as set out below.

The disclosure requirements apply to a change made to an existing contract, including an amendment, change order, or extension of a contract if:

1. A disclosure of interested parties form was not filed for the existing contract; and either the changed contract requires an action or vote by the board or the value of the changed contract is at least \$1 million; or
2. The business entity submitted a disclosure of interested parties form to the district that is a party to the existing contract; and either there is a change to the disclosure; or the changed contract requires an action or vote by the board; or the value of the changed contract is at least \$1 million greater than the value of the existing contract.

1 TAC 46.4

Definitions “AgentContract” means a third party who undertakes to transact some contract between a board and a business or manage some affair for another person entity at the time it is voted on by the authority board or on account of at the other person. The term time it binds the board, whichever is earlier, and includes an employee, amended, extended, or renewed contract. 1 TAC 46.3(a)

“Business relationship entity” means a connection between two any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or more parties based on commercial activity of one of the parties. The term corporation. The term includes an entity through which business is conducted with a district, regardless of whether the entity is a for-profit or nonprofit entity, and does not include a connection based on governmental entity or state agency. Gov't Code 2252.908(a)(1); 1 TAC 46.3(b)

“Interested party” means a person who has a controlling interest in a business entity with whom a district contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. Gov't Code 2252.908(a)(3); 1 TAC 46.3(d), (e)

“Controlling interest” means:

- ~~1. A transaction that is subject to rate~~ An ownership interest or fee regulation by participating interest in a federal, state, or local governmental business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds ten percent;
- ~~1.2.~~ Membership on the board of directors or an agency other governing body of a federal, state, or local governmental business entity; of which the board or other governing body is composed of not more than ten members; or
- ~~2.3.~~ Service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. This provision does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.
- ~~1. A transaction conducted at a price and subject to terms available to the public; or~~
- ~~2. A purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.~~

~~“Family relationship” means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code. [See DBE]~~

~~“Gift” means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.~~

~~“Local government officer” means a member of the board; the superintendent; or an agent (including an employee) of the district who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.~~

~~“Vendor” means a person who enters or seeks to enter into a contract with the district. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries.~~

~~Local Gov’t Code 176.001~~

**Required Vendor
Disclosure**

~~The Texas Ethics Commission shall adopt a conflict of interest questionnaire that requires disclosure of a vendor's business and family relationships with a district. Local Gov't Code 176.006(b)~~

1 TAC 46.3(c)

"Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature. 1 TAC 46.3(f)

"Value" of a contract is based on the amount of consideration received or to be received by the business entity from the district under the contract. 1 TAC 46.3(g)

Note: See BBFA for additional information applicable to disclosures under Local Government Code Chapter 176, including:

- Definitions;
- Conflicts disclosure statements required to be filed by certain local government officers, including vendors who are also local government officers; and
- Internet posting requirements for conflicts disclosure statements and questionnaires.

**Conflict of Interest
Questionnaire**

A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with the district and:

- ~~3.1.~~ Has an employment or other business relationship with a local government officer of the district, or a family member of the officer, described by Local Government Code 176.003(a)(2)(A);
- ~~4.2.~~ Has given a local government officer of the district, or a family member of the officer, one or more gifts with the aggregate value specified by Local Government Code 176.003(a)(2)(B), excluding any gift described by Local Government Code 176.003(a-1); or
- ~~5.3.~~ Has a family relationship with a local government officer of the district.

Local Gov't Code 176.006(a)

The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the ~~date that the vendor~~ later of:

1. The date that the vendor:

- a. Begins discussions or negotiations to enter into a contract with a district;
- b. Submits to the district an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the district; or

~~1.2.~~ 2. The date the ~~person~~vendor becomes aware:

- a. Of an employment or other business relationship with a local government officer, or a family member of the officer; described by Local Government Code 176.006(a);
- b. That the person has given one or more gifts; described by Local Government Code 176.006(a); or
- c. Of a family relationship with a local government officer.

Local Gov't Code 176.006(a-1)

*Updating
Incomplete or
Inaccurate
Questionnaires*

A vendor shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate. *Local Gov't Code 176.006(d)*

~~Vendors Who Are
Local Government
Officers~~

~~A person who is both a local government officer and a vendor of the district is required to file the questionnaire only if the person enters or seeks to enter into a contract with the district, or is an agent of a person who enters or seeks to enter into a contract with the district. *Local Gov't Code 176.006(e)*~~

*Validity of
Contract*

The validity of a contract between a vendor and the district is not affected solely because the vendor fails to comply with these requirements. *Local Gov't Code 176.006(i)*

Required Contract
Provisions

No Israel Boycott

A district may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it does not boycott Israel and will not during the term of the contract.

The requirement above applies only to a contract that:

1. Is between a district and a company with ten or more full-time employees; and
2. Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the district.

Gov't Code 2271.002

“Company” has the meaning assigned by Government Code 808.001, except that the term does not include a sole proprietorship. Gov’t Code 2271.001(2)

Retention of Contracting Information

Application

These provisions apply to a contract that:

1. Has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the district; or
2. Results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the district in a fiscal year of the district.

A board may not accept a bid for a contract described above or award the contract to an entity that the board has determined has knowingly or intentionally failed to comply with Government Code Chapter 552, Subchapter J (Additional Provisions Relating to Contracting Information) in a previous bid or contract described above unless the board determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of that subchapter. [For additional information and requirements, see GBA and GBAA.]

Requirements

A contract described above must require a contracting entity to:

1. Preserve all contracting information related to the contract as provided by the records retention requirements applicable to the district for the duration of the contract;
2. Promptly provide to the district any contracting information related to the contract that is in the custody or possession of the entity on request of the district; and
3. On completion of the contract, either:
 - a. Provide at no cost to the district all contracting information related to the contract that is in the custody or possession of the entity; or
 - b. Preserve the contracting information related to the contract as provided by the records retention requirements applicable to the district.

Bid and Contract Language

Except as described at Exception, below, a bid for a contract described above and the contract must include the following statement: “The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include “bid” or “contract” as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.”

Notice of
Noncompliance

A board that is the party to a contract described above shall provide notice to the entity that is a party to the contract if the entity fails to comply with a requirement of Government Code Chapter 552, Subchapter J applicable to the entity. The notice must:

1. Be in writing;
2. State the requirement that the entity has violated; and
3. Unless the exception described below applies, advise the entity that the board may terminate the contract without further obligation to the entity if the entity does not cure the violation on or before the tenth business day after the date the board provides the notice.

Contract
Termination

Except as provided below, a governmental body may terminate a contract described above if: The board provides the required notice to the entity that is party to the contract;

2. The contracting entity does not cure the violation in the prescribed period;
3. The board determines that the contracting entity has intentionally or knowingly failed to comply with a requirement of Government Code Chapter 552, Subchapter J; and
4. The board determines that the entity has not taken adequate steps to ensure future compliance with the requirements of that subchapter.

An entity has taken adequate steps to ensure future compliance with Government Code Chapter 552, Subchapter J if:

1. The entity produces contracting information requested by the board that is in the custody or possession of the entity not later than the tenth business day after the date the board makes the request; and
2. The entity establishes a records management program to enable the entity to comply with Government Code Chapter 552, Subchapter J.

Exception

A board may not terminate a contract under these provisions if the contract is related to the purchase or underwriting of a public security, the contract is or may be used as collateral on a loan, or the contract's proceeds are used to pay debt service of a public security or loan.

Gov't Code 552.371(a), .372-.374 [See GBA]

Prohibitions

Entertainment
Event Contracts

A person, including a board, may not include a provision in a contract related to a parade, concert, or other entertainment event paid for in whole or in part with public funds that prohibits or would otherwise prevent the disclosure of information relating to the receipt or expenditure of public or other funds by a board for the event. A contract provision that violates Government Code 552.104(c) is void. Gov't Code 552.104(c) [See GBA for information related to competition or bidding.]

Taxpayer Resource
Transactions

A district may not enter into a taxpayer resource transaction with an abortion provider or an affiliate of an abortion provider. Gov't Code 2272.003(a)

“Taxpayer resource transaction” means a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity receives something of value in return.

“Affiliate” means a person or entity who enters into with another person or entity a legal relationship created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

1. Common ownership, management, or control between the parties to the relationship;
2. A franchise granted by the person or entity to the affiliate; or
3. The granting or extension of a license or other agreement authorizing the affiliate to use the other person's or entity's brand name, trademark, service mark, or other registered identification mark.

Gov't Code 2272.001(3), (5)

Lobbying
Restriction—
Tobacco Education
Grant Funds

A district receiving funds or grants from the Permanent Fund for Health and Tobacco Education and Enforcement may not use the funds to pay: Lobbying expenses incurred by the district;

- ~~1.~~2. A person or entity that is required to register with the Texas Ethics Commission under Government Code Chapter 305 (Registration of Lobbyists);

Internet Posting

- ~~3.~~A district shall provide access on the district's Internet website to the required conflict of interest statements and questionnaires filed with the records administrator. Local Gov't Code 176.009Any partner, employee, employer, relative, contractor,

consultant, or related entity of a person or entity described by item 2; or

4. A person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.

Gov't Code 403.1067(a)

Prohibited
Contracts

A district may not enter into a governmental contract with a company identified on a list prepared and maintained under Government Code 806.051 (now Government Code 2270.0201) (companies with business operations in Sudan), 807.051 (now Government Code 2270.0102) (companies with business operations in Iran), and 2252.153 (companies known to have contracts with or provide supplies or services to foreign terrorist organization). Gov't Code 2252.152

"Governmental contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment. The term includes a contract to obtain professional services subject to Government Code 2254. Gov't Code 2252.151(3)

Reduction of Energy Consumption

~~A~~The board shall establish a long-range energy plan to reduce ~~a~~the district's annual electric consumption by five percent beginning with the 2008 state fiscal year and consume electricity in subsequent fiscal years in accordance with the district's energy plan. The plan must include:

1. Strategies for achieving energy efficiency, ~~including facility design and construction~~, that:
 - a. Result in net savings for the district; or
 - b. Can be achieved without financial cost to the district; and
2. For each strategy identified above, the initial, short-term capital costs and lifetime costs and savings that may result from implementation of the strategy.

[A strategy for achieving energy efficiency includes facility design and construction.](#)

In determining whether a strategy may result in financial cost to the district, the board shall consider the total net costs and savings that may occur over the seven-year period following implementation of the strategy.

The board may submit the plan to the State Energy Conservation Office for the purposes of determining whether funds available through loan programs administered by the office or tax incentives administered by the state or federal government are available to the district. The board may not disallow any proper allocation of incentives.

Education Code 44.902

Energy or Water Conservation Measures Savings Performance Contracts

"Energy savings performance contract" has the meaning assigned by Local Government Code 302.001.

Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. An energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

The board may enter into energy savings performance contracts only with persons who are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

~~The Government Code Chapter 2269~~ (Contracting and Delivery Procedures for Construction Projects ~~described at Government Code Chapter 2269 do~~) does not apply to energy savings performance contracts.

Performance Bond Before entering an energy savings performance contract, athe board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond relating to the installation of the measures in accordance with Government Code Chapter 2253-A (Public Work Performance and Payment Bonds). The board may also require a separate bond to cover the value of the guaranteed savings on the contract.

Financing An energy savings performance contract may be financed:

1. Under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing.
2. With the proceeds of bonds.
3. Under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

Notwithstanding other law, the board may use any available money to pay the provider of the energy or water conservation measures under these provisions, and the board is not required to pay for such costs solely out of the savings realized by the district under an energy savings performance contract. The board may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

An energy savings performance contract ~~for energy or water conservation measures~~ shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by athe district under the contract. If the term of an energy savings performance contract exceeds one year, the district's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures as determined by the district, divided by the number of years in the contract term.

| | |
|--------------------------|--|
| Contract Procurement | <p>An energy savings performance contract shall be let according to the procedures established for professional services by Government Code 2254.004 (the Professional Services Procurement Act). [See CH] Notice of the request for qualifications shall be published in the manner provided for competitive bidding.</p> <p>The board may contract with the provider of the energy or water conservation measures to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.</p> |
| Cost Savings Review | <p>Before entering into an energy savings performance contract, the board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Occupations Code 1001.053 and 1001.407 (Texas Engineering Practice Act) apply to work performed under the contract.</p> <p><i>Education Code 44.901</i></p> |
| Recycling Program | <p>In cooperation with the comptroller or the Texas Commission on Environmental Quality (TCEQ), A district shall:</p> <ol style="list-style-type: none"> 1. Establish a program for the separation and collection of all recyclable materials generated by the district's operations, including at a minimum, aluminum, steel containers, aseptic packaging, polycoated paperboard cartons, high-grade office paper, and corrugated cardboard. "Recyclable materials" includes materials in a district's possession that have been abandoned or disposed of by the district's officers or employees or by any other person. 2. A district shall also: Provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials. 3. Evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled. |

4. Establish educational and incentive programs to encourage maximum employee participation.

~~TCEQ by order shall exempt from compliance with Health and Safety Code 361.425; 30 TAC 328.202~~

Exemptions

These provisions:

~~A do not apply to a school district with a student enrollment of fewer than 10,000 students; and,~~

A district may exclude one or more recyclable materials from their program if the ~~district petitions TCEQ for an exemption and TCEQ~~ Texas Commission on Environmental Quality (TCEQ) finds that ~~compliance~~

1. A recycling program for a recyclable material is not available through their solid waste provider; or
2. The inclusion of a recyclable material would ~~work~~ create a hardship.

A district may request additional consideration from TCEQ if compliance with these provisions would create a hardship.

30 TAC 328.204

Definitions

“Hardship” means a circumstance that causes unreasonable burden on the ~~district~~ governmental entity.

~~Health and Safety Code 361.425~~

Certificate of Mold Remediation

~~When a district sells property, the district shall provide to the buyer a copy of any certificate of mold remediation that has been issued for the property during the five years preceding the date the district sells the property. Occupations Code 1958.154(b); 16 TAC 78.150(e)~~

“Recyclable material” means a material generated by the entity's operations, including aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.

30 TAC 328.201(2), (3)

Pools

Generally

~~An owner, manager, operator, or other attendant in charge of a For required public swimming pool, wading pool, baby pool, hot tub, in-ground spa, spray fountain, or other artificial body of water typically used for recreational swimming, bathing, or play shall comply with relevant pool sanitation and safety standards necessary to prevent drowning adopted by the executive commissioner of the Health and Human Services Commission. see Health and Safety Code~~

341.~~064~~ and .0645; and 25 ~~TAC~~Administrative Code 265.181–
~~.208~~211.

Drains

Each public pool and spa shall comply with the drain cover standards found at 15 U.S.C. Section 8003. “Public pool and spa” means a swimming pool or spa that is open to the public generally, whether for a fee or free of charge. *15 U.S.C. 8003*

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Note: For information on ~~procuring goods and services under Education Code Chapter 44~~[the new instructional facilities allotment](#), see ~~CH(LEGAL)-CBA~~.

For additional legal requirements applicable to purchases with federal funds, see CBB.

For information on ~~the new instructional facilities allotment, see CBA~~[procuring goods and services under Education Code Chapter 44](#), see CH.

[For required vendor disclosures and contract provisions, including prohibitions, see CHE.](#)

[For provisions pertaining to criminal history record information on contractors, see CJA\(LEGAL\).](#)

[For legal requirements related to energy savings performance contracts, see CL.](#)

Definition

[“Public work contract” means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work. Gov’t Code 2253.001\(4\)](#)

Board Authority

A district may adopt rules as necessary to implement Government Code Chapter 2269. *Gov’t Code 2269.051*

Delegation of Authority

The board may delegate its authority under Government Code Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person.

The ~~board~~[district](#) shall provide notice of the delegation, the limits of the delegation, and the name or title of each designated person by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

Gov’t Code 2269.053

[For information regarding delegation in the event of a catastrophe, emergency, or natural disaster, see CH.]

Contracts Valued at or Above \$50,000

[Except as provided by Education Code Chapter 44, Subchapter B](#), all district contracts [for the purchase of goods and services](#) valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method [of the following methods](#), that provides the best value for a district [see also CH]:

1. An interlocal contract. [Education Code 44.031\(a\)\(4\)](#) [See CH]

2. A method provided by Government Code Chapter 2269 for construction services. Education Code 44.031(a)(5)

- a. Competitive bidding. Gov't Code 2269 Subch. C [See CVA]
- b. Competitive sealed proposals. Gov't Code 2269 Subch. D [See CVB]
- c. Construction manager-agent method. Gov't Code 2269 Subch. E [See CVC]
- d. Construction manager-at-risk method. Gov't Code 2269 Subch. F [See CVD]
- e. Design-build method. Gov't Code 2269 Subch. G [See CVE]
- f. Job order ~~contract~~contracting. Gov't Code 2269 Subch. I [See CVF]

~~2.3.~~ The reverse auction procedure as defined by Government Code 2155.062(d). Education Code 44.031(a)(6) [See CH]

Education Code 44.031(a); Gov't Code Ch. 2269

~~[For information on contract-related fees, see CH.]~~

~~Selecting a Contracting Method~~

~~A board that considers a construction contract using a method authorized by Government Code Chapter 2269 other than competitive bidding must, before advertising, determine which method provides the best value for the district. Gov't Code 2269.056(a)~~

Exceptions
Emergency Damage or Destruction

~~For information on procurement options when~~ school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and a board determines that the delay posed by the methods provided for in under Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. ~~Education Code 44.031(h).~~ see CH.

Contracts Requiring a Bond

A reverse auction procedure, ~~whether the same or similar to that described by Government Code 2155.062,~~ may not be used to obtain services related to a public work contract for which a bond is required under Government Code 2253.021 [see Payment and Performance Bonds, below]. ~~Gov't Code 2253.021(h)~~ "Reverse auction procedure" has the meaning assigned by Government

[Code 2155.062 or a procedure similar to that described by Section 2155.062. Gov't Code 2253.021\(h\)](#)

**Public Notice
Publication**

[A board shall advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.](#)

~~For a contract entered into by a board under a method provided by Government Code 2269, the board shall publish notice of the time by when and place where the bids or proposals, or the responses to a bid or proposal or request for qualifications, will be received and opened shall be published in the county in which a district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. Education Code 44.031(g);~~ [manner prescribed by law.](#)

Gov't Code 2269.052(a)-(b)

[\[See CH for additional notice publication requirements.\]](#)

**Contract Selection
Criteria**

In determining the award of a contract [under Government Code Chapter 2269](#), the district shall consider and apply:

1. Any existing laws, including any criteria, related to historically underutilized businesses; and
2. Any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

In determining the award of a contract, the district may consider:

1. [The price.](#)
2. The offeror's experience and reputation.
3. The quality of the offeror's goods or services.
4. The impact on the ability of the district to comply with rules relating to historically underutilized businesses.
5. The offeror's safety record.
6. The offeror's proposed personnel.

7. Whether the offeror’s financial capability is appropriate to the size and scope of the project.
8. Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Gov’t Code 2269.055

~~Out-of-State
Bidders~~

~~A board shall not award a contract for general construction, improvements, services, or public works projects or for purchase of supplies, materials, or equipment to a bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located or a state in which a majority of the manufacturing relating to the contract will be performed. Gov’t Code 2252.001–.002~~

~~This requirement shall not apply to a contract involving federal funds. A district shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. Gov’t Code 2252.003–.004~~

Publishing Using
Method Other Than
Competitive Bidding

Determine Best
Value

Publish Criteria

The board that considers a construction contract using a method authorized by Government Code Chapter 2269 other than competitive bidding must, before advertising, determine which method provides the best value for the district.

~~A~~The district shall base its selection among offerors on applicable criteria listed for the particular method used. The district shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion. ~~Gov’t Code 2269.056(b)~~

~~Submission~~

~~A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery. Gov’t Code 2269.059~~

~~Selection~~

~~A district shall base its selection among offerors on applicable criteria listed for the particular method used. Gov’t Code 2269.056(b)~~

~~Making~~Make
Evaluations Public

~~A~~The district shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded. ~~Gov’t Code 2269.056(c), .105~~

Gov’t Code 2269.056

Submission

A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery. Gov’t Code 2269.059

Right to Work

While engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement under Government Code Chapter 2269, a district:

1. May not consider whether a person is a member of or has another relationship with any organization; and
2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

Gov't Code 2269.054

Collective Bargaining

A district awarding a public work contract funded with state money, including the issuance of debt guaranteed by the state, may not:

1. Prohibit, require, discourage, or encourage a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to an agreement with a collective bargaining organization relating to the project; or
2. Discriminate against a person described by item 1 based on the person's involvement in the agreement, including the person's status or lack of status as a party to the agreement or willingness or refusal to enter into the agreement.

Required Contract Provisions

Gov't Code 2269.0541(a)

Out-of-State Bidders

For ~~information on required contract provisions~~ legal requirements regarding out-of-state bidders, see CH(LEGAL).

Change Orders

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

Education Code 44.0411

**Inspection,
Verification, and
Testing**

Independently of the contractor, construction manager-at-risk, or design-build firm, a district shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district. The district shall select the services for which it contracts in accordance with Government Code 2254.004. *Gov't Code 2269.058*

Impact Fees

A district is not required to pay impact fees imposed under Local Government Code Chapter 395 unless the board consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board considers advisable to provide for the payment of the fees. *Local Gov't Code 395.022*

**Energy Savings
Performance
Contracts**

~~The contracting and delivery procedures for construction projects described at Government Code Chapter 2269 do not apply to energy savings performance contracts described at Education Code 44.901. Education Code 44.901(j) [See CL]~~

**Professional
Services**

Architects and
Engineers

An architect or engineer required to be selected or designated under Government Code Chapter 2269 has full responsibility for complying with Occupations Code Chapter 1051 or 1001, as applicable.

If the selected or designated architect or engineer is not a full-time employee of the district, the district shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Government Code 2254.004 [see Procuring Professional Services, below].

Gov't Code 2269.057

*Registered
Architect*

An architectural plan or specification for any of the following may be prepared only by an architect ~~registered in accordance with Occupations Code, Title 6, Chapter 1051:~~

1. A new building having construction costs exceeding \$100,000 that is to be:
 - a. Constructed and owned by a district ~~that~~; and
 - b. Used for education, assembly, or office occupancy; or
2. An alteration or addition having construction costs exceeding \$50,000 that:
 - a. Is to be made to an existing building that:
 - (1) Is owned by a district; and

~~(1)(2)~~ (2) Is or will be used for education, assembly, or office occupancy ~~when the total projected construction costs at the commencement of construction exceed \$100,000;~~ and

- b. ~~Any alteration or addition to an existing building owned by a district that is, or will be, used for education, assembly, or office occupancy when the total projected construction costs of alteration or addition at the commencement of construction exceed \$50,000 and the alteration or addition~~ Requires the removal, relocation, or addition of any walls a wall or ~~partitions~~ partition or the alteration or addition of an exit.

This ~~section~~ provision does not prohibit ~~a district~~ an owner of a building from ~~choosing a registered~~ contracting with an architect or ~~a registered professional~~ engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand, ~~limit, or otherwise alter~~ the scope of ~~a design professional's~~ practice ~~nor does it allow a design professional to prepare of~~ an architectural plan architect or engineer beyond the scope of practice that the architect or ~~specification described above~~ engineer is authorized to practice under Occupations Code Chapter 1001 or 1051.

Occupations Code 1051.703; 22 TAC 1.212

Registered
Engineer

~~Electrical or mechanical engineering plans, specifications, and estimates for a district construction project whose contemplated cost at completion is more than \$8,000 and that involves~~ A district may not construct a public work involving engineering in which the public health, welfare, or safety ~~must be prepared by a registered professional engineer, and is involved, unless:~~

1. The engineering plans, specifications, and estimates have been prepared by an engineer; and
- ~~4.2.~~ The engineering construction ~~executed~~ is to be performed under the direct supervision of ~~such~~ an engineer.

Occupations Code 1001.053; Atty. Gen. Op. C-791 (1966) 407

The following work is exempt from Occupations Code Chapter 1001 (Texas Engineering Practice Act): ~~A district is not required to secure~~

1. A public work that involves electrical or mechanical engineering, if the services of a registered professional engineer to prepare plans for contemplated expense for the completed project is \$8,000 or supervise a construction project less; or

2. A public work that does not involve electrical or mechanical engineering ~~and for which, if~~ the contemplated ~~cost does not exceed~~ expense for the completed project is \$20,000- or less.

Occupations Code 1001.053

Certification for Purchases Through Purchasing Cooperatives

A district may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative under Government Code Chapter 791 in an amount greater than \$50,000 unless a person designated by the district certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Occupation Code Chapter 1001 or 1051, ~~Occupations Code~~; or
2. The plans and specifications required under Occupation Code Chapters 1001 and 1051, ~~Occupations Code~~, have been prepared.

“Purchasing cooperative” means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

Gov’t Code 791.011(j) [See CH for more information on interlocal contracts and purchasing cooperatives.]

Procuring Professional Architectural or Engineering Services

~~The purchasing requirements of~~ Education Code 44.031 ~~de~~does not apply to a contract for professional services rendered, including the services of an architect. ~~A district may contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031. Education Code 44.031(f)~~ Education Code 44.031(f) [See CH for information on the Professional Services Procurement Act generally.]

~~Competitive bids shall not be solicited for professional services of any architect, landscape architect, land surveyor, professional engineer, or state-certified or state-licensed real estate appraiser. Contracts for these professional services shall be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. Gov’t Code 2254.002, .003(a)~~

In procuring architectural, engineering, or land-surveying services, a district shall:

1. First select the most highly qualified provider on the basis of demonstrated competence and qualifications; and

2. Then attempt to negotiate ~~a contract~~ with that provider a contract at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land-surveying services, a district shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. ~~A~~The district shall continue this process to select and negotiate with providers until ~~the parties enter into~~ a contract is entered into.

Gov't Code 2254.004

An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

Contracts for
Engineering or
Architectural
Services

Indemnification

A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which ~~the~~a district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the district against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

Duty to Defend

Except as provided below, a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which ~~the~~a district is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the district, the district's agent, the district's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the district exercises control. A covenant or promise may provide for the reimbursement of ~~the~~a district's reasonable attorney's fees in proportion to the engineer's or architect's liability.

*District as
Additional
Insured*

~~The~~A district may require in a contract for engineering or architectural services to which the district is a party that the engineer or architect name the district as an additional insured under the engineer's or ~~architect's~~architect's general liability insurance policy and provide any defense provided by the policy.

Standard of Care A contract for engineering or architectural services to which a ~~gov-~~~~ernmental agency~~district is a party must require a licensed engineer or registered architect to perform services:

1. With the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and
2. As expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

In a contract for engineering or architectural services to which ~~the~~a district is a party, a provision establishing a different standard of care than a standard described above is void and unenforceable. If a contract contains a void and unenforceable provision, the standard of care described above applies.

Nothing in these provisions prohibits a district in a contract for engineering or architectural services to which the district is a party from including and enforcing conditions that relate to the scope, fees, and schedule of a project in the contract.

Local Gov't Code 271.904

Right to Work

~~While engaged in procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement under Government Code Chapter 2269, a district:~~

- ~~1. May not consider whether a person is a member of or has another relationship with any organization; and~~
- ~~2.1. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.~~

~~Gov't Code 2269.054~~

Collective Bargaining

~~A district awarding a public work contract funded with state money, including the issuance of debt guaranteed by the state, may not:~~

- ~~1. Prohibit, require, discourage, or encourage a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to an agreement with a collective bargaining organization relating to the project; or~~
- ~~2. Discriminate against a person described by item 1 based on the person's involvement in the agreement, including the person's status or lack of status as a party to the agreement or willingness or refusal to enter into the agreement.~~

~~Gov't Code 2269.0541~~

Accessibility

~~Each facility or part of a facility constructed by, on behalf of, or for the use of a district shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Alterations of facilities that affect or could affect their usability shall, to the maximum extent feasible, be altered in such manner that the altered portion is readily accessible to and usable by individuals with disabilities. 28 C.F.R. 35.151, 34 C.F.R. 104.23~~

Payment and Performance Bonds

~~When a board~~A district that makes a public work contract ~~for constructing, altering, or repairing a public building or carrying out or completing any public work, it~~with a prime contractor shall require the contractor, before beginning the work, to execute to the district:~~payment and/or~~

- ~~1. A performance bonds as specified below. The bonds shall~~bond if the contract is in excess of \$100,000; and
- ~~2. A payment bond if the contract is in excess of \$25,000.~~

A bond required by this provision must be executed by a corporate surety in accordance with Insurance Code ~~7.19-1. The bond shall~~Article 7.19-1 (now Insurance Code 3503.001-.005). A bond for a public work contract with a district must be payable to ~~the board and in a its~~form must be approved by the awarding board.

~~Gov't Code 2253.021(a), (d)-(e)~~

~~For a contract in excess of \$100,000, a~~The performance bond ~~shall be executed~~is solely for the protection of the district awarding the public work contract, in the amount of the contract, and conditioned on the faithful performance of the work ~~according to~~in accordance with the plans, specifications, and contract documents. ~~The bond is solely for the protection of a district. Gov't Code 2253.021(b)~~

~~For a contract in excess of \$25,000, a~~The payment bond ~~shall be executed in the amount of the contract~~is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material, and in the amount of the contract. ~~Gov't Code 2253.021(c)~~

Failure to Obtain Payment Bond

If a ~~board~~district fails to obtain ~~a payment bond covering a contract in excess of \$25,000 from the~~a prime contractor a payment bond as required above;~~it~~

1. The district is subject to the same liability ~~as that~~ a surety would ~~be, have~~ if the surety had issued a payment bond and if the district had obtained the bond; and

~~4.2.~~ A payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the public work contract were subject to ~~Subchapter J, Property Code~~ Chapter 53, ~~Property Code, Gov't Code 2253.027~~ Subchapter J (Lien on Money Due Public Works Contractor).

~~No Bond for Design Services Only~~

~~A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm. Gov't Code 2269.311(a) [See CVE for more information on design/build contracts, including bond amounts.]~~

Gov't Code 2253.027(a)

Bond for Insured Loss

A ~~board~~ district shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the ~~governmental entity~~ district, furnishes or has furnished by a contractor:

1. A performance bond as described above for the benefit of a district, ~~as described above~~; and

2. A payment bond, as described above, ~~for the benefit of the beneficiaries described above.~~

If the payment bond is not furnished, ~~a~~ the district is subject to the same liability that a surety would have if the surety had issued the payment bond and the district had required the bond to be provided.

~~These bonds~~ The bonds required to be furnished by the provisions above shall be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish these bonds.

Exception to Bond Requirement

~~The requirement that a district secure a performance or payment bond from an insurance company, above, does not apply~~ These provisions do not apply to a district when a surety company is complying with an obligation under a bond that had been issued for the benefit of the district.

Gov't Code 2253.022

**Prevailing Wage on
Public Works**

~~A worker,~~ "Worker" includes a laborer, or mechanic. Gov't Code 2258.001(3)

A worker employed on a public work, ~~exclusive of maintenance work,~~ by or on behalf of a district shall be paid:

1. ~~Not less than the general prevailing rate of per diem wages. The general prevailing rate of per diem wages is the~~ rate of per diem wages for work of a similar character in the locality in which the work is performed; ~~and also includes the~~
2. Not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The requirements above do not apply to maintenance work. A worker is employed on a public work for purposes of this provision if the worker is employed by a contractor or subcontractor in the execution of a contract for public work with a district. ~~Gov't Code 2258.001, .021~~

~~A~~ Gov't Code 2258.021

For a contract for a public work awarded by a district, the board shall determine ~~, as a sum certain,~~ the general prevailing rate of per diem wages in ~~a~~ the district for each craft or type of worker needed to execute the contract and ~~also~~ the prevailing rate for legal holiday and overtime work ~~by:~~ ~~To ascertain the general prevailing rate of per diem wages, a board shall either conduct~~

1. Conducting a survey of the wages received by classes of workers, ~~laborers, and mechanics~~ employed on projects of a character similar to the contract work in ~~a~~ the district in which the public work is to be performed; or ~~adopt~~
2. Using the prevailing wage rate as determined by the U.S. Department of Labor, in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments.

The board shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents. A board shall specify ~~the prevailing rate of per diem wages in~~ in the call for bids for the contract and in the contract itself. ~~A the wage rates determined under these provisions. The~~ board's determination of the general prevailing rates of per diem wages ~~shall be~~ is final.

~~Gov't Code 2258.001, .022~~ (a), (c)-(e)

Government Code 2258.022(b) applies to a public work located in a county bordering the United Mexican States or in a county adjacent to a county bordering the United Mexican States. Gov't Code 2258.022(b)

Enforcement

A board awarding a contract, and an agent or officer of the board, shall: ~~receive~~

1. Take cognizance of complaints ~~regarding of all~~ violations of ~~the prevailing wage requirements of Government Code Chapter 2258, and~~ committed in the execution of the contract; and
2. Withhold money forfeited or required to be withheld under Government Code Chapter 2258 from the payments to the contractor under the contract, except that the board may not withhold money from the contractor as required by statute. Upon other than the final payment without a determination by the board that there is good cause to believe that the contractor has violated Government Code Chapter 2258.

On receipt of a complaint, a board shall determine, before the 31st day after the date the information is received, including a complaint by a worker, concerning an alleged violation of Government Code 2258.023 [see Penalty for Noncompliance, below] by a contractor or subcontractor, a board shall make an initial determination as to whether good cause exists to believe that a contractor or subcontractor has failed to pay the prevailing wage and shall provide written notice of its determination to the violation occurred. A board must make its determination before the 31st day after the date the board receives the information. A board shall notify in writing the contractor or subcontractor and any affected laborer, worker, or mechanic of its initial determination.

Gov't Code 2258.051-.052(a)-(c)

Retainage and Reimbursement

A board shall retain any ~~amounts~~ amount due under the contract pending a final determination of the violation. ~~Upon a final determination that violations have occurred, Gov't Code 2258.052(d)~~

Note: Arbitration of unresolved issues is governed by Government Code 2258.053-.055.

A board shall use ~~these~~ any amounts retained ~~amounts~~ under Government Code Chapter 2258 to pay the ~~laborer, worker, or mechanic~~ the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing rate ~~of per diem wages~~ as provided

in the arbitrator’s award. ~~A~~The board may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made. *Gov’t Code 2258.052(d), .056(a)-(b)*

Penalty for
Noncompliance

The contractor ~~to whom the contract~~who is awarded a contract by a district or ~~any subcontractors~~a subcontractor of the contractor shall pay not less than the ~~specified rates to all laborers, workers, and mechanics~~determined under these provisions to a worker employed by it in the execution of the contract. A contractor or subcontractor who ~~fails to pay the specified rates as required~~violates this provision shall pay to ~~at~~the district on whose behalf the contract is made, \$60 for each worker, ~~laborer, or mechanic~~ employed for each calendar day or part of ~~a calendar~~the day that the worker is paid less than the wage rates ~~specified~~stipulated in the contract. A board ~~must~~awarding a contract shall specify this penalty in the contract. ~~If a district~~A contractor or subcontractor does not violate this section if a board awarding a contract does not determine the prevailing wage rates and specify ~~them~~the rates in the contract, ~~the contractor or subcontractor may not be fined. A board~~as required by these provisions. The board shall use any ~~penalty~~money collected under this provision to offset the costs incurred in ~~administering~~the administration of Government Code Chapter 2258. *Gov’t Code 2258.023*

Criminal Offense

An officer, agent, or representative of a district commits an offense if the person willfully violates or does not comply with a provision of Government Code 2258. Gov’t Code 2258.058(a)

**Required Workers’
Compensation
Coverage**

A district that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers’ compensation insurance coverage for each employee of the contractor employed on the public project. Each subcontractor shall provide such a certificate relating to coverage of the subcontractor’s employees to the general contractor, who shall provide the subcontractor’s certificate to the district. *Labor Code 406.096(a)-(b)*

~~“Project” includes the provision of all services related to a building or construction contract for a district.~~ A district that enters into a building or construction contract on a project shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers’ compensation coverage, using the language required by 28 Administrative Code 110.110(c)(7).
2. As part of the contract, using the language required by 28 Administrative Code 110.110(c)(7), require the contractor to perform the duties and responsibilities pertaining to required

workers' compensation coverage as set out in 28 Administrative Code 110.110(d).

3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person beginning work on the project.
4. ~~This provision includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, but is not limited to, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. "Services" includes, but is not limited to, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.~~ Obtain from the contractor a new certificate of coverage showing extension of coverage:
 - a. Before the end of the current coverage period, if the contractor's current certificate shows that the coverage period ends during the duration of the project; and
 - b. No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project.
5. Retain certificates of coverage on file for the duration of the project and for three years thereafter.
6. Provide a copy of the certificate of coverage to the Texas Department of Insurance, Division of Workers' Compensation upon request and to any person entitled to a copy by law.
7. Use the language contained in 28 Administrative Code 110.110(c)(7) for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

28 TAC 110.110(a)(7), (8), (c)

| | |
|----------------------------------|---|
| Exception | <p>This coverage requirement does not apply to sole proprietors or partners of a covered business entity or certain, and corporate officers, if who meet the sole proprietor, partner or officer is requirements of Labor Code 406.097(c), and who are explicitly excluded from the coverage of their business entity through an endorsement to the insurance policy or certificate of authority to self-insure. Labor Code 406.097; <u>in accordance with Labor Code 406.097(a).</u> 28 TAC 110.110(i)</p> |
| <u>Definitions</u> | <p><u>“Persons providing services on the project” includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. “Services” includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.</u> 28 TAC 110.110(a)(7)</p> <p><u>“Project” includes the provision of all services related to a building or construction contract for a district.</u> 28 TAC 110.110(a)(8)</p> |
| Criminal History Offenses | <p>For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).</p> |
| Impermissible Practices | <p>A board member, employee, or agent of a district who knowingly or with criminal negligence violates the purchasing laws found in criminal offenses for violations of Education Code Chapter 44 as described at Education Code 44.032 is subject to criminal penalties. Education Code 44.032 [See 44.031, see CH].</p> |
| Enforcement Actions | <p>Government Code Chapter 2269 may be enforced through an action for declaratory or injunctive relief filed not later than the tenth day after the date on which the contract is awarded. Gov’t Code 2269.452</p> |
| Defects in Facilities | <p>A district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of a district facility financed by bonds shall provide the commissioner with written notice of the action by registered or certified mail, return receipt requested, not later than the 30th day after the date the action is filed. If the district fails to comply with this provision, the court or an arbitrator or other adjudicating authority shall dismiss the action without prejudice. The dismissal of an action under this</p> |

provision extends the statute of limitations on the action for a period of 90 days.

The notice must include a copy of the petition and an itemized list of the defects in the design, construction, renovation, or improvement for which the district is seeking damages under the action.

In an action involving an instructional facility financed by bonds for which the district receives state assistance under Education Code Chapter 46, Subchapter A (Instructional Facilities Allotment), the commissioner may join in the action on behalf of the state to protect the state's share [in the action](#).

A district that brings an action under these provisions shall use the net proceeds from the action for:

1. The repair of the defective design, construction, renovation, or improvement of the facility on which the action is brought, including the repair of any ancillary damage to furniture and fixtures;
2. The replacement of the facility on which the action is brought;
3. The reimbursement of the district for a repair or replacement; or
4. Any other purpose with written approval from the commissioner.

Education Code 46.008 applies to the repair. A district shall provide to the commissioner an itemized accounting of any repairs made.

The state's share resulting from an action brought under these provisions involving an instructional facility financed by bonds for which the school district receives state assistance under Education Code Chapter 46, Subchapter A is state property. The district shall send to the comptroller any portion of the state's share not used by the district to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the facility. Education Code 48.272 applies to the state's share.

Definitions

“Net proceeds” means the difference between the amount recovered by or on behalf of a school district in an action, by settlement or otherwise, and the legal fees and litigation costs incurred by the district in prosecuting the action.

“State's share” means an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under Education Code Chapter 46, Subchapter A used to pay the principal of and interest

on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

[Education Code 44.151](#)

Attorney General Enforcement

If the attorney general believes that a district has violated or is violating Education Code 44.151(d), (e), or (f) (use of proceeds, accounting, and the state’s share), the attorney general may, after providing at least two weeks' notice to the district, bring an action on behalf of the state to enjoin the district from violating those sections.

In such an action, the attorney general may request and the court may order any other appropriate relief that is in the public interest, including payment of:

1. A civil penalty in an amount not to exceed \$20,000 for each violation;
2. The attorney general's reasonable costs for investigating and prosecuting the violation; or
3. If applicable, the amount of the state's share.

[Education Code 44.152\(a\)–\(b\)](#)

Attorney Fees

A governmental contract ~~for general construction, an improvement, a service, or a public works project~~ may not provide for the award of attorney’s fees to a district in a dispute in which the district prevails unless the contract provides for the award of attorney’s fees to each other party to the contract if that party prevails in the dispute. ~~Gov’t Code 2252.904~~

~~The term includes a contract to obtain professional services subject to Government Code 2254. Gov’t Code 2252.151(3)~~

[“Governmental contract” means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.](#)

[Gov’t Code 2252.904](#)

Construction Liability Claims

To assert a claim against a contractor, subcontractor, supplier, or design professional for damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property that is a public building or public work in which the district has an interest, the district must comply with Government Code Chapter 2272. *Gov’t Code 2272.002(a)*

Prohibited Contracts

~~A district may not enter into a governmental contract with a company identified on a list prepared and maintained under Government Code 806.051 (now Government Code 2270.0201) (companies with business operations in Sudan), 807.051 (now Government Code 2270.0102) (companies with business operations in Iran), and 2252.153 (companies known to have contracts with or provide supplies or services to foreign terrorist organization). Gov't Code 2252.152~~

~~“Governmental contract” means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment. The term includes a contract to obtain professional services subject to Government Code 2254. Gov't Code 2252.151(3)~~

~~[For other prohibitions, see CH(LEGAL).]~~

~~**Note:** For additional legal requirements applicable to purchases with federal funds, see CBB.~~

Note: For additional legal requirements applicable to purchases with federal funds, see CBB.

For legal requirements generally applicable to the procurement process, see CH and CV.

“Competitive bidding” is a procurement method by which a district contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.

Except as otherwise provided by Government Code Chapter 2269 or other law, a district may contract for the construction, alteration, rehabilitation, or repair of a facility only after the district advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Gov't Code 2269.101

~~The competitive bidding process is governed by the process outlined below. A district must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:~~

- ~~1. Giving public notice of the project;~~
- ~~2. Publishing contract selection criteria;~~
- ~~3. Making evaluations public after the contract is awarded; and~~
- ~~4. Providing for inspection, verification, and testing necessary for acceptance of the facility by the district.~~

~~*Education Code 44.031(g); Gov't Code 2269.052, .055, .056(c), .058, .105*~~

Preparation of Request

The district shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to submit a bid. *Gov't Code 2269.103*

~~Use of Architect or~~
/Engineer

The district shall select or designate an architect or engineer in accordance with Occupations Code Chapter 1051 or 1001, as applicable, to prepare the construction documents required for a project

to be awarded by competitive bidding. *Gov't Code 2269.102* [See CV]

Opening Bids

The district shall receive, publicly open, and read aloud the names of the offerors and their bids. [Gov't Code 2269.104](#)

Bids ~~shall~~may be opened only by ~~a~~the board at a public meeting or by an officer or employee of ~~a~~the district at or in an office of the district. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. ~~Gov't Code 2269.104;~~Local Government Code Chapter 271, Subchapter B does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid. *Local Gov't Code 271.026*

~~A~~The board ~~shall have the right~~is entitled to reject any and all bids. *Local Gov't Code 271.027(a)*

Safety Record

In determining who is a responsible bidder, ~~a board~~the district may take into account the safety record of the bidder; of the firm, corporation, partnership, or institution represented by the bidder; or of anyone acting for such firm, corporation, partnership, or institution, ~~provided that the board has~~ if:

1. The board has adopted a written definition and criteria for accurately determining the safety record of ~~the~~a bidder.
2. The board has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the ~~bidder's~~ responsibility of the bidder.
3. ~~Ascertained that such determination is~~The determinations are not arbitrary and capricious.

Local Gov't Code 271.0275

Conflict of Laws

Identical Bids

If a district is required to accept bids on a contract and receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, the board shall enter into a contract with only one of those bidders and must reject all other bids.

If only one of the bidders submitting identical bids is a resident of the district, the district must select that bidder. If two or more of the bidders submitting identical bids are residents of the district, the district must select one of those bidders by the casting of lots. In all other cases, the district must select from the identical bids by the casting of lots.

The casting of lots must be in a manner prescribed by the board and must be conducted in the presence of the board. All qualified

bidders or their legal representatives may be present at the casting of lots.

These provisions do not prohibit a district from rejecting all bids. These provisions apply to all districts required by general or special law to accept bids and award contracts on the basis of the lowest and best bid, but do not apply to bidding for contracts to act as a depository for school funds under Education Code Chapter 45, Subchapter G [see BDAE].

Local Gov't Code 271.901

Make Evaluations Public

Not later than the seventh day after the date the contract is awarded, the district shall document the basis of its selection and shall make the evaluations public. Gov't Code 2269.105

Applicability of Other Competitive Bidding Laws

Except as otherwise specifically provided in this policy, Local Government Code Chapter 271, Subchapter B, (Competitive Bidding on Certain Public Works Contracts), does not apply to the competitive bidding process ~~conducted under this policy.~~ Gov't Code 2269.106

~~**Note:** For additional legal requirements applicable to purchases with federal funds, see CBB.~~

Note: For additional legal requirements applicable to purchases with federal funds, see CBB.

For legal requirements generally applicable to the procurement process, see CH and CV.

“Competitive sealed proposals” is a procurement method by which a district requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility. ~~Gov’t Code 2269.151~~In selecting a contractor through competitive sealed proposals, a district shall follow the procedures provided by Government Code 2269, Subchapter D. Gov’t Code 2269.151

~~If a district uses the competitive sealed proposals method as described in this policy, it must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:~~

~~Selecting a contracting method;~~

~~Giving public notice of the project;~~

~~Publishing contract selection criteria;~~

~~Making evaluations public after the contract is awarded; and~~

~~Providing for inspection, verification, and testing necessary for acceptance of the facility by the district.~~

~~Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058~~

Request for Proposals

AThe district shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request. *Gov’t Code 2269.153*

Architect/Engineer

AThe district shall select or designate an architect or engineer to prepare construction documents for the project. *Gov’t Code 2269.152 [See CV]*

Opening Proposals

AThe district shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors. Not later than the 45th day after the date on which the proposals are opened, athe district shall evaluate and rank each proposal submitted in relation to the published selection criteria. *Gov't Code 2269.154*

Selection

AThe district shall select the offeror that submits the proposal that offers the best value for the district based on:

1. The selection criteria in the request for proposal and the weighted value for those criteria in the request for proposal; and ~~on its ranking evaluation.~~

2. Its ranking evaluation.A

The district shall first attempt to negotiate a contract with the selected offeror. AThe district and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If athe district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

Gov't Code 2269.155

~~**Note:** For additional legal requirements applicable to purchases with federal funds, see CBB.~~

A “construction manager-agent”

Note: For additional legal requirements applicable to purchases with federal funds, see CBB.

For legal requirements generally applicable to the procurement process, see CH and CV.

The “construction manager-agent method” is a delivery method by which a district contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors.

A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the district by providing ~~consultation or administrative services during the design and construction phase and managing multiple contracts with various construction prime contractors for~~ construction administration and management services described above for the construction, rehabilitation, alteration, or repair of a facility. A district may retain a construction manager-agent only as provided by Government Code Chapter 2269, Subchapter E.

Gov’t Code 2269.201

The contract between the district and the construction manager-agent may require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this policy, on-site management, and other services specified in the contract. *Gov’t Code 2269.201–.202*

A construction manager-agent may not:

1. Self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility.
2. Be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility.
3. Provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration, or repair of the facility.

Gov’t Code 2269.203

A construction manager-agent represents [a the](#) district in a fiduciary capacity. *Gov't Code 2269.204*

~~A district may use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, a district must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:~~

- ~~1.— Selecting a contracting method;~~
- ~~2.— Giving public notice of the project;~~
- ~~3.— Publishing contract selection criteria;~~
- ~~4.— Making evaluations public after the contract is awarded; and~~
- ~~5.— Providing for inspection, verification, and testing necessary for acceptance of the facility by the district.~~

~~*Education Code 44.031(g); Gov't Code 2269.052, .055, .056(a), (c), .058, .201(c)*~~

Architect/Engineer

On or before the selection of a construction manager-agent, the district shall select or designate an architect or engineer in accordance with Occupations Code Chapter 1051 or 1001, as applicable, to prepare the construction documents for the project. ~~*Gov't Code 2269.205(a)*~~ [See CV]

[A The](#) district's architect or engineer may not serve, alone or in combination with another person, as the construction manager-agent unless the architect or engineer is hired to serve as the construction manager-agent under a separate or concurrent selection process conducted in accordance with this policy. [A This provision does not prohibit the](#) district's architect or engineer ~~is not prohibited by this policy~~ from providing customary construction-phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws. ~~*Gov't Code 2269.205(b)*~~

To the extent that the construction manager-agent's services are defined as part of the practice of architecture or engineering under Occupations Code Chapter 1051 or 1001 those services must be conducted by a person licensed under the applicable chapter. ~~*Gov't Code 2269.205(c)*~~

[Gov't Code 2269.205](#)

Selection of Construction Manager-Agent

A district shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner

that an architect or engineer is selected under Government Code 2254.004. *Gov't Code 2269.207* [See CV]

Insurance

~~The~~A construction manager-agent [selected under this policy](#) shall maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence. *Gov't Code 2269.208*

**Selection of
Contractors**

A district using the construction manager-agent method shall procure, in accordance with applicable law and in any manner authorized by Government Code Chapter 2269, a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work and provide performance and payment bonds to the district in accordance with applicable laws. *Gov't Code 2269.206*

~~**Note:** For additional legal requirements applicable to purchases with federal funds, see CBB.~~

Note: For additional legal requirements applicable to purchases with federal funds, see CBB.

For legal requirements generally applicable to the procurement process, see CH and CV.

The “construction manager-at-risk method” is a delivery method by which a district contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility. ~~Gov’t Code 2269.251(a)~~

A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or ~~repairs~~repair of a facility at ~~a~~the contracted price as a general contractor and provides consultation to ~~a~~the district regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price. ~~Gov’t Code 2269.251(b)~~A district may use the construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility only as provided by Government Code Chapter 2269, Subchapter F.

~~A district may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, a district must comply with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:~~

- ~~1. Selecting a contracting method;~~
- ~~2. Giving public notice of the project;~~
- ~~3. Publishing contract selection criteria;~~
- ~~4. Making evaluations public after the contract is awarded; and~~
- ~~5. Providing for inspection, verification, and testing necessary for acceptance of the facility by the district.~~

~~Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058, .251(c)~~

Architect/Engineer

On or before the selection of a construction manager-at-risk, the district shall select or designate an architect or engineer or architect to prepare the construction documents for the project. ~~Gov't Code 2269.252(a)~~ [See CV]

The district's architect or engineer for a project, or an entity related to the district's architect or engineer, may not serve, alone or in combination with another, as the construction manager-at-risk. ~~The~~ This provision does not prohibit the district's engineer or architect ~~is not prohibited~~ from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

An entity is related to the district's architect or engineer if the entity is a sole proprietorship, corporation, partnership, limited liability company, or other entity that is a subsidiary, parent corporation, or partner or has any other relationship in which the district's architect or engineer has an ownership interest, or is subject to common ownership or control, or is party to an agreement by which it will receive any proceeds of the construction manager-at-risk's payments from the district.

~~Gov't Code 2269.252(b), (c)~~

Selection Process

~~A~~ The district shall select the construction manager-at-risk in ~~either~~ a one-step or two-step process. A district shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process, that includes:

1. A statement as to whether the selection process is a one-step or two-step process;
2. General information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and
3. Other information that may assist a district in its selection of a construction manager-at-risk.

~~A~~ The district shall state the selection criteria in the request for proposals or qualifications.

If a one-step process is used, ~~a~~ the district may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, ~~a~~ the district may not request fees or prices in step one. In step two, ~~a~~ the district may request that five or fewer offerors, selected solely on the basis of

qualifications, provide additional information, including the construction manager-at-risk's proposed fee and ~~its price~~prices for fulfilling the general conditions.

Gov't Code 2269.253(a)–(e)

Opening and Evaluating Proposals

At each step, ~~a~~the district shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, ~~a~~the district shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Not later than the 45th day after the date on which the final proposals are opened, ~~a~~the district shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals. *Gov't Code 2269.253(f)–(g)*

Selection

~~A~~The district shall select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end. *Gov't Code 2269.254(a)–(c)*

Notice of ~~Make~~ Rankings Public

Not later than the seventh day after the date the contract is awarded, the district shall make the proposal rankings public. *Gov't Code 2269.254(d)*

Trade Contractors/ Subcontractors

A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if:

1. The construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and
2. The district determines that the construction manager-at-risk's bid or proposal provides the best value for the district.

Gov't Code 2269.255

Bids or Proposals

The construction manager-at-risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, or district. All bids or proposals shall be

made available to the district on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals. *Gov't Code 2269.256(a)*

If the construction manager-at-risk reviews, evaluates, and recommends to the district a bid or proposal from a trade contractor or subcontractor but the district requires another bid or proposal to be accepted, the district shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of the district's requirement that another bid or proposal be accepted. *Gov't Code 2269.256(b)*

Default

If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this policy, the construction manager-at-risk may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. *Gov't Code 2269.257*

**Payment and
Performance Bond
Amounts**

If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the ~~project~~construction budget, as specified in the request for proposals or qualifications. The construction manager-at-risk shall deliver the bonds not later than the tenth day after the date the construction manager-at-risk executes the contract, unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to ~~a~~the district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established. *Gov't Code 2269.258* [See CV for more information on payment and performance bonds.]

~~**Note:** For additional legal requirements applicable to purchases with federal funds, see CBB.~~

Note: For additional legal requirements applicable to purchases with federal funds, see CBB.

For legal requirements generally applicable to the procurement process, see CH and CV.

“Design-build” is a project delivery method by which a ~~governmental entity~~ district contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. *Gov’t Code 2269.301*

This policy applies only to a facility that is a building or an associated structure, including an electric utility structure. This policy does not apply to:

1. A highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
2. A building or structure that is incidental to a project that is primarily a civil engineering construction project.

Gov’t Code 2269.302

A district may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure. ~~In using this only as provided by Government Code Chapter 2269, Subchapter G. In using that method, the district shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure in accordance with applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)] which include the following steps:~~ *Gov’t Code 2269.303*

- ~~1. Selecting a contracting method;~~
- ~~2. Giving public notice of the project;~~
- ~~3. Publishing contract selection criteria;~~
- ~~4. Making evaluations public after the contract is awarded; and~~
- ~~5. Providing for inspection, verification, and testing necessary for acceptance of the facility by the district.~~

~~Education Code 44.031(g); Gov't Code 2269.052, .055, .056(a),
(c), .058, .303~~

Design-Build Firm A design-build firm [under this policy](#) must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor. *Gov't Code 2269.304*

Architect/Engineer [The](#) district shall select or designate an architect or engineer independent of the design-build firm to act as the district's representative for the duration of the project. *Gov't Code 2269.305* [See CV]

Request for Qualifications [The](#) district shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion, and other information that may assist potential design-build firms in submitting proposals for the project. *Gov't Code 2269.306(a)*

The district may not require offerors to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications. *Gov't Code 2269.306(d)*

Design Criteria Package [The](#) district shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires architectural or engineering services that constitute the practice of architecture within the meaning of Occupations Code Chapter 1051 or the practice of engineering within the meaning of Occupations Code Chapter 1001, those services shall be provided in accordance with the applicable law. *Gov't Code 2269.306(b)*

The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the district's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the district considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement. *Gov't Code 2269.306(c)*

Evaluation Qualification For each design-build firm that responded to the request for qualifications, the district shall evaluate the firm's experience, technical

competence, and capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each firm must certify to the district that each architect or engineer that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by Government Code 2254.004. A district shall qualify a maximum of five responders to submit proposals that contain additional information and, if the district chooses, to interview for final selection. *Gov't Code 2269.307(a)–(c)*

Proposals

The district shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The district may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology.

“Costing methodology” means an offeror’s policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.

Gov't Code 2269.307(d)–(e)

The district shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. *Gov't Code 2269.307(f)*

Selection

The district shall select the design-build firm that submits the proposal offering the best value for the district on the basis of the published selection criteria and on its ranking evaluations.

AThe district shall first attempt to negotiate a contract with the selected firm. If athe district is unable to negotiate a satisfactory contract with the selected firm, the district shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

Gov't Code 2269.308(a)–(c)

Notice of Make Rankings Public

Not later than the seventh day after the date the contract is awarded, the district shall make the proposal rankings public. *Gov't Code 2269.308(d)*

Design After selection of the design-build firm, that firm's architects or engineers shall submit all design elements for review and determination of scope compliance to the district or the district's architect or engineer before or concurrently with construction. *Gov't Code 2269.309*

Final Construction Documents The design-build firm shall supply a set of construction documents for the completed project to the district at the conclusion of construction. The documents must note any changes made during construction. *Gov't Code 2269.310*

Payment or Performance Bond A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm. ~~[See CV for more information on payment and performance bonds]~~ [under this policy.](#)

Amount If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the construction budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the tenth day after the date the design-build firm executes the contract, unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

Gov't Code 2269.311 [\[See CV for more information on payment and performance bonds\]](#)

~~**Note:** For additional legal requirements applicable to purchases with federal funds, see CBB.~~

Note: For additional legal requirements applicable to purchases with federal funds, see CBB.

For legal requirements generally applicable to the procurement process, see CH and CV.

“Job order contracting” is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite. *Gov’t Code 2269.401*

This policy applies only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. This policy does not apply to:

1. A highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
2. A building or structure that is incidental to a project that is primarily a civil engineering construction project.

Gov’t Code 2269.402

~~If a district uses the job order contracts method as described in this policy, it must comply with the applicable legal requirements in this policy as well as other applicable legal requirements [see CV(LEGAL)], which include the following steps:~~

- ~~1. Selecting a contracting method;~~
- ~~2. Giving public notice of the project;~~
- ~~3. Publishing contract selection criteria;~~
- ~~4. Making evaluations public after the contract is awarded; and~~
- ~~5. Providing for inspection, verification, and testing necessary for acceptance of the facility by the district.~~

~~*Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058*~~

A district may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if the work is of a recurring nature but the delivery times are indefinite, and indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks. The district shall establish the maximum aggregate contract price when it advertises the proposal. The board shall approve each job, task, or purchase order that exceeds \$500,000. *Gov't Code 2269.403*

Establishing Unit Prices

The district may establish contractual unit prices for a job order contract by:

1. Specifying one or more published construction unit price books and the applicable divisions or line items; or
2. Providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or prepriced work items as the price proposal.

Gov't Code 2269.404

Advertising and Opening Proposals

Competitive Sealed Proposal Method

A district may use the competitive sealed proposal method under Government Code Chapter 2269, Subchapter D for job order contracts. [See CVB] The district shall advertise for, receive, and publicly open sealed proposals for job order contracts. ~~A~~The district may require offerors to submit ~~additional~~ information in addition to rates, including experience, past performance, and proposed personnel and methodology. *Gov't Code 2269.405*

Architect or Engineer

If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Occupations Code Chapter 1051 or the practice of engineering within the meaning of Occupations Code Chapter 1001, a district shall select or designate an architect or engineer to prepare the construction documents for the project. [\[See CV\]](#)

This ~~requirement~~[provision](#) does not apply to a job order contract or an order issued under the contract for industrialized [housing, industrialized](#) buildings, or relocatable educational facilities subject to and approved under Occupations Code Chapter 1202 if the contractor employs the services of an architect or engineer who approves the documents for the project.

Gov't Code 2269.408 ~~[See CV]~~

Awarding Contracts

The district may award job order contracts to one or more job order contractors in connection with each solicitation of proposals. *Gov't Code 2269.406*

~~An order for a job or project under a job order contract must be signed by a district's representative and the contractor. The order may be:~~

~~3.1. A fixed-price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or~~

~~4.1. A unit price order based on the quantities and line items delivered.~~

~~Gov't Code 2269.410~~

Contract Term

The base term for a job order contract may not exceed two years. The district may renew the contract annually for not more than three additional years. *Gov't Code 2269.409*

Use of Contract

A job order contract may be used to accomplish work only for the district that awards the contract unless:

1. The solicitation for the job order contract and the contract specifically provide for use by other persons; or
2. The district enters into an interlocal agreement that provides otherwise.

Gov't Code 2269.407

Job Orders

An order for a job or project under a job order contract must be signed by the district's representative and the contractor. The order may be:

1. A fixed-price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or

2. A unit price order based on the quantities and line items delivered.

Gov't Code 2269.410

Bonds

The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order. *Gov't Code 2269.411* [See CV for more information on payment and performance bonds.]

Purpose

A primary purpose of the public school curriculum is to prepare thoughtful, active citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage. A district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter, in reading courses, and in the adoption of textbooks. *Education Code 28.002(h)*

As a condition of accreditation, a district shall provide instruction in the essential knowledge and skills at appropriate grade levels in the foundation and enrichment curriculum. *Education Code 28.002(c); 19 TAC 74.1(b)*

A district shall ensure that all children in the district participate actively in a balanced curriculum designed to meet individual needs. *Education Code 28.002(g)*

Instruction may be provided in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade-level standards. *19 TAC 74.2*

Required Curriculum

Foundation
Curriculum

A district that offers kindergarten through grade 12 shall offer a foundation curriculum that includes:

1. English language arts and reading;
2. Mathematics;
3. Science; and
4. Social studies, consisting of Texas, United States, and world history; government; geography; and economics with emphasis on the free enterprise system and its benefits.

Education Code 28.002(a)(1); 19 TAC 74.1(a)(1)

Enrichment
Curriculum

A district that offers kindergarten through grade 12 shall offer an enrichment curriculum that includes:

1. Languages other than English, to the extent possible. American Sign Language is a language for these purposes and the district may offer an elective course in the language;
2. Health, with emphasis on:
 - a. Physical health, including the importance of proper nutrition and exercise;

- b. Mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision-making; and
 - c. Suicide prevention, including recognizing suicide-related risk factors and warning signs;
3. Physical education;
 4. Fine Arts;
 5. Career and technical education;
 6. Technology applications;
 7. Religious literature, including the Hebrew Scriptures (Old Testament) and New Testament, and its impact on history and literature; and
 8. Personal financial literacy.

Education Code 28.002(a)(2), (e); 19 TAC 74.1(a)(2)

Digital Citizenship

The State Board of Education by rule shall require each district to incorporate instruction in digital citizenship into the district's curriculum, including information regarding the potential criminal consequences of cyberbullying.

"Cyberbullying" has the meaning assigned by Education Code 37.0832. [See FFI]

"Digital citizenship" means the standards of appropriate, responsible, and healthy online behavior, including the ability to access, analyze, evaluate, create, and act on all forms of digital communication.

Education Code 28.002(z)

Positive Character
Traits

Beginning with the 2021–22 school year, districts are required to provide instruction in the essential knowledge and skills for positive character traits outlined in 19 Administrative Code Chapter 120, Subchapter A at least once in the following grade bands: kindergarten–grade 2, grades 3–5, grades 6–8, and grades 9–12.

Districts may provide the required instruction in a variety of arrangements, including through a stand-alone course or by integrating the positive character traits standards in the essential knowledge and skills for one or more courses or subject areas at the appropriate grade levels.

19 TAC 120.1

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|------------------------------------|---|
| Local Credit | A district may offer courses for local credit, at its discretion, in addition to those in the required curriculum, but it may not delete or omit instruction in the foundation and enrichment curricula specified above. <i>Education Code 28.002(f); 19 TAC 74.1(b)</i> |
| Local Instructional Plan | A district’s local instructional plan may draw on state curriculum frameworks and program standards as appropriate. A district is encouraged to exceed minimum requirements of law and State Board rule. |
| Major Curriculum Initiatives | Before the adoption of a major curriculum initiative, including the use of a curriculum management system, a district must use a process that: <ol style="list-style-type: none">1. Includes teacher input;2. Provides district employees with the opportunity to express opinions regarding the initiative; and3. Includes a meeting of the board at which information regarding the initiative is presented, including the cost of the initiative and any alternatives that were considered; and members of the public and district employees are given the opportunity to comment regarding the initiative. <p><i>Education Code 28.002(g)</i></p> |
| Common Core State Standards | A district may not use common core state standards to comply with the requirement to provide instruction in the essential knowledge and skills at appropriate grade levels. A district may not be required to offer any aspect of a common core state standards curriculum. “Common core state standards” means the national curriculum standards developed by the Common Core State Standards Initiative. <i>Education Code 28.002(b-1), (b-3), (b-4)</i> |
| Scope and Sequence | In adopting a recommended or designated scope and sequence for a subject in the required curriculum under Education Code 28.002(a) in a particular grade level, a district shall ensure sufficient time is provided for teachers to teach and students to learn the essential knowledge and skills for that subject and grade level [see DG]. <i>Education Code 28.0027(a)</i> |
| Coordinated Health Programs | TEA shall make available to each district one or more coordinated health programs in elementary, middle, and junior high school. Each program must provide for coordinating education and services related to: <ol style="list-style-type: none">1. Physical health education, including programs designed to prevent obesity, cardiovascular disease, oral diseases, and |

Type 2 diabetes and programs designed to promote the role of proper nutrition;

2. Mental health education, including education about mental health conditions, mental health well-being, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision-making;
3. Substance abuse education, including education about alcohol abuse, prescription drug abuse, and abuse of other controlled substances;
4. Physical education and physical activity; and
5. Parental involvement.

Education Code 38.013; 19 TAC 102.1031(a)

A district shall participate in appropriate training to implement TEA's coordinated health program and shall implement the program in each elementary, middle, and junior high school in the district. *Education Code 38.014*

Coordinated school health programs that are developed by districts and that meet TEA criteria may be approved and made available as approved programs. Districts must use materials that are proven effective, such as TEA-approved textbooks or materials developed by nationally recognized and/or government-approved entities. *19 TAC 102.1031(c)*

Physical Education

Each district shall establish specific objectives and goals the district intends to accomplish through the physical education curriculum. The physical education curriculum must be sequential, developmentally appropriate, and designed, implemented, and evaluated to enable students to develop the motor, self-management, and other skills, knowledge, attitudes, and confidence necessary to participate in physical activity throughout life.

A physical education course shall:

1. Offer students an opportunity to choose among many types of physical activity in which to participate;
2. Offer students both cooperative and competitive games; and
3. Be an enjoyable experience for students.

On a weekly basis, at least 50 percent of a physical education class shall be used for actual student physical activity and the activity shall be, to the extent practicable, at a moderate or vigorous level.

Student/Teacher Ratio The objectives and goals shall include, to the extent practicable, student/teacher ratios [see EEB] that are small enough to enable the district to:

1. Carry out the purposes of and requirements for the physical education curriculum; and
2. Ensure the safety of students participating in physical education.

If a district establishes a student to teacher ratio greater than 45 to 1 in a physical education class, the district shall specifically identify the manner in which the safety of the students will be maintained.

Education Code 25.114, 28.002(d); 19 TAC 74.37

Classification for Physical Education A district shall classify students for physical education on the basis of health into one of the following categories:

1. Unrestricted—not limited in activities.
2. Restricted—excludes the more vigorous activities. Restricted classification is of two types:
 - a. Permanent—A member of the healing arts licensed to practice in Texas shall provide written documentation to the school as to the nature of the impairment and the expectations for physical activity for the student.
 - b. Temporary—Students may be restricted from physical activity of the physical education class. A member of the healing arts licensed to practice in Texas shall provide written documentation to the school as to the nature of the temporary impairment and the expected amount of time for recovery. During recovery time, the student shall continue to learn the concepts of the lessons but shall not actively participate in the skill demonstration.
3. Adapted and remedial—specific activities prescribed or prohibited for students as directed by a member of the healing arts licensed to practice in Texas.

19 TAC 74.31

School Health Advisory Council A board shall establish a local school health advisory council (SHAC) to assist the district in ensuring that local community values are reflected in the district's health education instruction. *Education Code 28.004(a)* [See BDF regarding composition of the SHAC and FFA regarding federal wellness requirements]

Duties The SHAC's duties include recommending:

1. The number of hours of instruction to be provided in:
 - a. Health education in kindergarten through grade 8; and
 - b. If the district requires health education for high school graduation, health education, including physical health education and mental health education, in grades 9 through 12.
2. Policies, procedures, strategies, and curriculum appropriate for specific grade levels designed to prevent physical health concerns, including obesity, cardiovascular disease, Type 2 diabetes, and mental health concerns, including suicide, through coordination of:
 - a. Health education, which must address physical health concerns and mental health concerns to ensure the integration of physical health education and mental health education;
 - b. Physical education and physical activity;
 - c. Nutrition services;
 - d. Parental involvement;
 - e. Instruction on substance abuse prevention;
 - f. School health services, including mental health services;
 - g. A comprehensive school counseling program under Education Code 33.005 [see FFEA];
 - h. A safe and healthy school environment; and
 - i. School employee wellness;
3. Appropriate grade levels and methods of instruction for human sexuality instruction;
4. Strategies for integrating the curriculum components specified by item 2, above, with the following elements in a coordinated school health program:
 - a. School health services, including physical health services and mental health services, if provided at a campus by the district or by a third party under a contract with the district;
 - b. A comprehensive school counseling program under Education Code 33.005 [see FFEA];
 - c. A safe and healthy school environment; and

- d. School employee wellness;
- 5. If feasible, joint use agreements or strategies for collaboration between the district and community organizations or agencies. Any agreement entered into based on a recommendation of the SHAC must address liability for the district and community organization;
- 6. Appropriate grade levels and curriculum for instruction regarding opioid addiction and abuse and methods for administering an opioid antagonist; and
- 7. Strategies to increase parental awareness regarding:
 - a. Risky behaviors and early warning signs of suicide risks and behavioral health concerns, including mental health disorders and substance use disorders; and
 - b. Available community programs and services that address risky behaviors, suicide risks, and behavioral health concerns.

Education Code 28.004(c), (n)

Policy
Recommendations

The SHAC shall consider and make policy recommendations to the district concerning the importance of daily recess for elementary school students. The SHAC must consider research regarding unstructured and undirected play, academic and social development, and the health benefits of daily recess in making the recommendations. The SHAC shall ensure that local community values are reflected in any policy recommendation made to the district concerning the importance of daily recess for elementary school students.

Education Code 28.004(l)

The SHAC shall make policy recommendations to the district to increase parental awareness of suicide-related risk factors and warning signs and available community suicide prevention services. *Education Code 28.004(o)*

**Content of Human
Sexuality Instruction**

The board shall determine the specific content of a district's instruction in human sexuality. *Education Code 28.004(h)*

The board shall select any instruction relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS) with the advice of the SHAC. The instruction must:

- 1. Present abstinence as the preferred choice of behavior for unmarried persons of school age;

2. Devote more attention to abstinence than to any other behavior;
3. Emphasize that abstinence is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with HIV or AIDS, and the emotional trauma associated with adolescent sexual activity;
4. Direct adolescents to a standard of behavior in which abstinence before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with HIV or AIDS; and
5. Teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates, if instruction on contraception and condoms is included in the curriculum.

Education Code 28.004(e)

Condoms

A district may not distribute condoms in connection with instruction relating to human sexuality. *Education Code 28.004(f)*

Separate Classes

If a district provides human sexuality instruction, it may separate students according to sex for instructional purposes. *Education Code 28.004(g)* [See FB regarding single-sex classes under Title IX]

Notice to Parents

Before each school year, a district shall provide written notice to a parent of each student enrolled in the district of the board's decision regarding whether the district will provide human sexuality instruction to district students. If instruction will be provided, the notice must include:

1. A summary of the basic content of the district's human sexuality instruction to be provided to the student, including a statement informing the parent of the instructional requirements under state law;
2. A statement of the parent's right to:
 - a. Review curriculum materials as provided by Education Code 28.004(j); and
 - b. Remove the student from any part of that instruction without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student's school; and

3. Information describing the opportunities for parental involvement in the development of the curriculum to be used in human sexuality instruction, including information regarding the SHAC.

A parent may use the grievance procedure at FNG concerning a complaint of a violation of notice requirements.

Education Code 28.004(i)–(i-1)

Availability of
Materials

A district shall make all curriculum materials used in human sexuality instruction available for reasonable public inspection. *Education Code 28.004(j)* [See EFA regarding selection of curriculum materials for human sexuality instruction]

Character Education

A district must adopt a character education program that includes the following positive character education traits:

1. Courage;
2. Trustworthiness, including honesty, reliability, punctuality, and loyalty;
3. Integrity;
4. Respect and courtesy;
5. Responsibility, including accountability, diligence, perseverance, and self-control;
6. Fairness, including justice and freedom from prejudice;
7. Caring, including kindness, empathy, compassion, consideration, patience, generosity, and charity;
8. Good citizenship, including patriotism, concern for the common good and the community, and respect for authority and the law;
9. School pride; and
10. Gratitude.

In developing or selecting a character education program under Education Code 29.906, a district shall consult with a committee selected by the district that consists of parents of district students, educators, and other members of the community, including community leaders.

The provisions above do not require or authorize proselytizing or indoctrinating concerning any specific religious or political belief.

Education Code 29.906

Note: The policies in the EHBA series are statements of principles governing special education programs for Texas school districts. In no way are these policies intended to cover the entire scope and detail involved in administering any special education program.

Nondiscrimination

No qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any district service, program, or activity. *42 U.S.C. 12132; 29 U.S.C. 794(a); 34 C.F.R. 104.4(a)* [See also FB]

**Free Appropriate
Public Education
(FAPE)**

Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through approved contracts. Instruction shall be supplemented by the provision of related services when appropriate. *Education Code 29.003(a)*

“Free appropriate public education” (FAPE) means special education and related services that:

1. Have been provided at public expense, under public supervision and direction, and without charge;
2. Meet standards set out by the Texas Education Agency (TEA);
3. Include an appropriate preschool, elementary school, or secondary school education; and
4. Are provided in conformity with the student’s individualized education program (IEP).

20 U.S.C. 1401(9); 34 C.F.R. 300.13, .17, .36

**Least Restrictive
Environment**

A district shall ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, shall be educated with children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment shall occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *20 U.S.C. 1412(a)(5); 34 C.F.R. 300.114(a)(2)*

Discipline

All disciplinary actions regarding students with disabilities shall be in accordance with federal requirements, Education Code Chapter 37, and 19 Administrative Code 89.1053. *19 TAC 89.1050(k)* [See FOF]

**Instructional
Arrangements and
Settings**

Instructional arrangements/settings shall be based on the individual needs and IEPs of eligible students receiving special education services and shall include the following:

Mainstream

The mainstream instructional arrangement/setting is for providing special education and related services to a student in a regular classroom; the regular classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect, and/or support services to the student and/or the student's regular classroom teacher(s) necessary to enrich the regular classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP.

Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, educational aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff.

Homebound

The homebound instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside;

Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy [see EEH(LOCAL)], also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in 19 Administrative Code 1005(b).

Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3–5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee.

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| <u>Hospital Class</u> | <u>The hospital class: instructional arrangement/setting is for providing services special education instruction in a classroom, a hospital facility, or a residential care and treatment facility not operated by a district; the district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.</u> |
| Speech Therapy | <u>The speech therapy instructional arrangement/setting is for providing speech therapy services <u>whether</u> in a regular education classroom or other in a setting; <u>other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.</u></u> |
| <u>Resource Room/Services</u> | <u>The resource room/services: instructional arrangement/setting is for providing special education and related services to a student in a setting other than the regular <u>classroom</u> education for less than 50 percent of the regular school day;.</u> |
| Self-Contained (Mild, Moderate, or Severe) Regular Campus | <u>The self-contained (mild, moderate, or severe) regular campus instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained program for 50 percent or more of the regular school day on a regular school campus;.</u> |
| <u>Off-Home Campus</u> | <u>The off-home campus: instructional arrangement/setting is for providing special education and related services to nondistrict the following, including, but not limited to, students at South Texas Independent School District and Windham School District:</u> <ol style="list-style-type: none"><u>1. A student who is one of a group of students from more than one district served in a single location, through when a free appropriate public education is not available in the respective sending district;</u><u>2. A student in a community setting or environment (not operated by a school district) that prepares the student for post-secondary education/training, integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives, including a student with regularly scheduled instruction or direct involvement provided by district personnel at or a nondistrict student in a facility, or not operated by a school district (other than a nonpublic day school) with instruction provided by district personnel; or</u><u>4-3. A student in a self-contained program at a district separate campus <u>operated by the district</u> that provides only special education and related services;.</u> |

Nonpublic Day
School

The nonpublic day school instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education;

Vocational
Adjustment
Class/Program

The vocational adjustment class/program instructional arrangement/setting is for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP; This instructional arrangement/setting shall be used in conjunction with the student's individual transition goals and only after the district's career and technical education classes have been considered and determined inappropriate for the student.

Residential Care
and Treatment
Facility (Not District
Resident)

The residential care and treatment facility (not district resident) instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the district; or providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a district campus. If the instruction is provided at the facility, rather than on a district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.

State-Supported
Living Center

The state-supported living center instructional arrangement/setting is for providing special education and related services to a student who resides at a state-supported living center when the services are provided at the state-supported living center location. If services are provided on a local district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.

19 TAC 89.63(c), .1005(b)

**Other Program
Options**

Other program options that may be considered for the delivery of special education and related services to a student include contracts with other districts and programs approved by TEA.

19 TAC 89.63(e)-f), .1005(f)

Regular School Day

Subject to 19 Administrative Code 89.1075(e) (General Program Requirements and Local District Procedures) [see EHBAB], for the purpose of determining the student's instructional arrangement/set-

ting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee. 19 TAC 89.1005(b)

Nonpublic Day School Placements

For nonpublic day school placements [see Nonpublic Day School, above], the district or shared service arrangement shall submit information to TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the district or shared service arrangement is contracting. The district or shared service arrangement shall not count contract students' average daily attendance as eligible. TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law. 19 TAC 89.1005(e)

Related Services

Definition

“Related services” means transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions in children.

The term includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive FAPE as described in the child's IEP, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that medical services shall be for diagnostic and evaluation purposes only.

The term does not include a medical device that is surgically implanted, the optimization of the device's functioning, or the replacement of such device.

20 U.S.C. 1401(26); 34 C.F.R. 300.34

Extended School Year Services

Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities.

A district shall ensure that ESY services are available as necessary to provide a student with a disability with FAPE.

ESY services must be provided only if the ~~admission, review, and dismissal (ARD)~~ARD committee determines, on an individual basis, that the services are necessary for FAPE. A district may not

limit ESY services to particular categories of disability or unilaterally limit the type, amount, or duration of ESY services.

34 C.F.R. 300.106; 19 TAC 89.1065

Off-Campus Program An off-campus program includes special education and related services provided during school hours in a facility other than a school district campus.

Program Provider An off-campus program provider is an entity that provides the services identified above and includes:

1. A county system operating under application of former law as provided in Education Code 11.301;
2. A regional education service center established under Education Code, Chapter 8;
3. A nonpublic day school; or
4. Any other public or private entity with which a school district enters into a contract under Education Code 11.157(a), for the provision of special education services in a facility other than a district campus operated by a district.

19 TAC 89.1094(a)(2)–(3)

Program Placement A district may contract with an off-campus program provider to provide some or all of the special education and related services to a student in accordance with the requirements in 19 Administrative Code 89.1094.

Before the district places a student with a disability in, or refers a student to, an off-campus program, the district shall initiate and conduct:

1. An onsite review to ensure that the off-campus program is appropriate for meeting the student's educational needs; and
2. A meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 C.F.R. 300.320–.325, state statutes, and commissioner of education rules in 19 Administrative Code Chapter 89 (Commissioner's Rules Concerning Special Education Services).

The appropriateness of the off-campus program for each student placed shall be documented in the IEP annually. The student's ARD committee may only recommend an off-campus program placement for a student if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the

district. The district must follow the requirements of 19 Administrative Code 89.1094(b)(3)(A)–(C), regarding the review of the placement of the off-campus program for each student.

The placement of more than one student in the same off-campus program facility may be considered in the same on-site visit to a facility. However, the IEP of each student must be individually reviewed, and a determination of appropriateness of placement and services must be made for each student.

19 TAC 89.1094(b)

Notification and
Review

Within 30 calendar days from an ARD committee's decision to place [or continue the placement of](#) a student in an off-campus program, a district must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA.

If the off-campus program is on the commissioner's list of approved off-campus programs, TEA will review the student's IEP and placement as required by 34 C.F.R. 300.120, and, in the case of a placement in or referral to a private school or facility, 34 C.F.R. 300.146. After review, TEA will notify the district whether federal or state funds for the off-campus program placement are approved. If TEA does not approve the use of funds, it will notify the district of the basis for the non-approval.

If the off-campus program is not on the commissioner's list of approved off-campus programs, TEA will begin the approval procedures described below. Districts must ensure there is no delay in implementing a child's IEP in accordance with 34 C.F.R. 300.103(c).

If an off-campus program placement is ordered by a special education hearing officer or court of competent jurisdiction, the district must notify TEA of the order within 30 calendar days. The off-campus program serving the student is not required to go through the approval procedures described in 19 Administrative Code 89.1094 for the ordered placement. If, however, the district or other districts intend to place other students in the off-campus program, the off-campus program will be required to go through the approval procedures to be included on the commissioner's list of approved off-campus programs.

19 TAC 89.1094(c)

Approval

Off-campus programs must have their educational programs approved for contracting purposes by the commissioner in accordance with 19 Administrative Code 89.1094(d).

| | |
|---------------------|--|
| Funding Procedures | The cost of off-campus program placements will be funded according to Education Code 42.151 (Special Education) [redesignated to Education Code 48.102] and 19 Administrative Code 89.63 1005(e) (Instructional Arrangements and Settings). |
| Contracts | <p>Contracts between districts and approved off-campus programs must not exceed a district's fiscal year and shall not begin prior to July 1 of the contracted fiscal year.</p> <p>Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change in placement or services within the school district's fiscal year.</p> <p><i>19 TAC 89.1094(e)(1)–(2)</i></p> |
| Change of Residence | If a student who is placed in an off-campus program by a district changes his or her residence to another Texas district during the school year, the district must notify TEA within ten calendar days of the date on which the district ceased contracting with the off-campus program for the student's placement. The student's new district must meet the requirements of 34 C.F.R. 300.323(e), by providing comparable services to those described in the student's IEP from the previous district until the new district either adopts the student's IEP from the previous district or develops, adopts, and implements a new IEP. The new district must comply with all procedures described in 19 Administrative Code 89.1094 for continued or new off-campus program placement. <i>19 TAC 89.1094(e)(3)</i> |

Identification

Child Find

A district shall ensure that all children residing within the district who have disabilities, regardless of the severity of their disabilities, and who are in need of special education and related services are identified, located, and evaluated. This requirement applies to:

1. Homeless children;
2. Children who are wards of the state;
3. Children attending private schools;
4. Highly mobile children (including migrant children); and
5. Children who are suspected of being in need of special education but who are advancing from grade to grade.

20 U.S.C. 1412(a)(3)(A); 34 C.F.R. 300.111(a)(1)(i), (c)

*Private School
Students*

A district shall conduct a timely and meaningful consultation with private school representatives regarding the child find process and the provision of special education and related services to children enrolled in private schools in the district.

A district shall undertake activities similar to those undertaken for public school children and shall complete the child find process for children enrolled in private schools in a time period comparable to that for other students attending public schools in the district.

20 U.S.C. 1412(a)(10)(A)(ii)–(iv) [See EHBAC regarding students in nondistrict placement.]

*Preschool
Students*

A district shall develop a system to notify district residents with children who are at least three and younger than six and who are eligible for enrollment in a special education program of the availability of the program. *Education Code 29.009*

**Requests and
Referrals for
Evaluation**

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. *20 U.S.C. 1414(a)(1)(E)*

Referral of students for a full individual and initial evaluation for possible special education services shall be a part of a district's overall general education referral or screening system. Either a parent, TEA, another state agency, or the district may initiate a request for an initial evaluation.

District Obligation to
Refer

~~Before referral~~, Students experiencing difficulty in the general classroom should be considered for all support services available to all students. ~~If~~, [such as tutorial; remedial; compensatory; response to evidence-based intervention; and other academic or behavior support services](#). A student [is not required to be provided](#)

with interventions for any specific length of time prior to a referral being made or a full individual and initial evaluation being conducted. If the student continues to experience difficulty in the general classroom ~~after~~with the provision of interventions, district personnel must refer the student for a full individual and initial evaluation. A referral for a full individual and initial evaluation may be initiated at any time by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student. 19 TAC 89.1011(a)

Parental Request

If a parent submits a written request to a district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:

1. Provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 C.F.R. 300.503, a copy of the procedural safeguards notice required by 34 C.F.R. 300.504, and an opportunity to give written consent for the evaluation; or
2. Provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 C.F.R. 300.503, and a copy of the procedural safeguards notice required by 34 C.F.R. 300.504.

~~20 U.S.C. 1414(a)(1); 34 C.F.R. 300.301; 19 TAC 89.1011(a), (b); Education Code 29.004(c);~~ 20 U.S.C. 1414(a)(1); 34 C.F.R. 300.301

Notice of Rights

A reasonable time before a district proposes or refuses to initiate the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education (FAPE) to a student, the district shall provide written notice to the student's parent or guardian. *20 U.S.C. 1415(b)(3); 34 C.F.R. 300.503(a)* [See EHBAE]

Initial Evaluation
Required

A district shall conduct a full individual and initial evaluation before the initial provision of special education and related services. *20 U.S.C. 1414(a)(1)(A)*

*Consent for Initial
Evaluation*

Before a district conducts an initial evaluation, it shall make reasonable efforts to obtain informed parental consent.

If the parent does not provide consent for an initial evaluation, or if the parent fails to respond to a request to provide consent, a district may, but is not required to, pursue the initial evaluation by utilizing due process procedures [see EHBAE], except to the extent inconsistent with state law relating to such parental consent.

Parental consent to initial evaluation shall not be construed as consent for placement for special education and related services.

20 U.S.C. 1414(a)(1)(D)(i)(I); 34 C.F.R. 300.300(b)

Wards of the
State

If the child is a ward of the state and is not residing with the child's parent, a district shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation, unless:

1. Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent;
2. The rights of the parent have been terminated; or
3. The rights of the parent to make educational decisions have been subrogated and an individual appointed by a judge to represent the student has given consent for an initial evaluation.

20 U.S.C. 1414(a)(1)(D)(iii); 34 C.F.R. 300.300(a)(2)

*Time Frame for
Completion of
Written Report*

A district must complete the written report of a full individual and initial evaluation:

1. Not later than the 45th school day following the date on which the district receives written consent for the evaluation from the student's parent. If a student has been absent from school during that period on three or more school days, the period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or
2. For students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or homeschool setting, not later than the 45th school day following the date on which the district receives written consent for the evaluation from the student's parent.

If a district receives written consent for the evaluation from the student's parent at least 35 but less than 45 school days before the last instructional day of the school year, the written report of a full individual and initial evaluation of a student must be provided to the student's parent not later than June 30 of that year.

If a district receives written consent signed by a student's parent less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, the report must be completed not later

than the 45th school day following the date the district received written consent, except that the period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent.

A student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or at the alternate attendance taking time set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school district or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.

"School day" does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term.

These time frames shall not apply if the parent repeatedly fails or refuses to produce the child for the evaluation.

Transfer
Students

A district shall ensure that evaluations of children who transfer from one district to another in the same academic year are coordinated with the children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of evaluations.

If a student was in the process of being evaluated for special education eligibility by a district and enrolls in another school district before the previous district completed the full individual and initial evaluation, the new district must coordinate with the previous district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 C.F.R., 300.301(d)(2) and (e) and 300.304(c)(5).

The timelines above do not apply in such a situation if:

1. The new school district is making sufficient progress to ensure a prompt completion of the evaluation; and
2. The parent and the new school district agree to a specific time when the evaluation will be completed.

20 U.S.C. 1414(a)(1)(C), (b)(3)(D); 34 C.F.R. 300.301(c)–(e); Education Code 29.004; 19 TAC 89.1011

*Psychological
Examinations*

If a district determines that an additional examination or test is required for the initial and individual evaluation, the district shall provide the information required by Education Code 29.0041(a) and

shall obtain additional parental consent. If a parent does not give consent within 20 calendar days after the district provided the information, the parent's consent is considered denied.

The time required for a district to provide information and seek consent may not be counted toward the time frame for completion of an evaluation. [See Time Frame for Completion of Written Report, above]

Education Code 29.0041

**Eligibility and
Reevaluations**

A student is eligible to participate in a district's special education program if:

1. The student is between the ages of 3 and 21, inclusive;
2. The student has one or more of the disabilities listed in federal regulations, state law, or both; and
3. The student's disability(ies) prevents the student from being adequately or safely educated in the public schools without the provision of special services.

*20 U.S.C. 1401(3); Education Code 29.003(b); 19 TAC 89.1035;
~~1040~~*

Disability Definitions

To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 C.F.R. 300.8(a), subject to the provisions of 34 C.F.R. 300.8(c), Education Code 29.003, and 19 Administrative Code 89.1040. The provisions in 19 Administrative Code 89.1040 specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law. 19 TAC 89.1040

Visual and Auditory
Impairments

A student with a visual or auditory impairment shall be eligible to participate in a district's special education program from birth.
19 TAC 89.1035(b); Education Code 30.002(e), .081

Determination of
Initial Eligibility

Upon completion of the administration of assessments and other evaluation measures, a team of qualified professionals and the parent shall make the determination of whether the child has a disability and of the educational needs of the child.

A district shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

20 U.S.C. 1414(b)(4); 34 C.F.R. 300.306(a)

The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion

of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year (ESY) services during that summer.

When a report is provided to a parent not later than June 30 as described at Time Frame for Completion of Written Report, above, the ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, an evaluation indicates that a student will need ESY services, the ARD committee must meet as expeditiously as possible.

19 TAC 89.1011(d), (e)

Consent for
Services

*Initial Provision of
Services*

A district must obtain informed consent from the parent for the initial provision of special education and related services. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of services, the district:

1. May not use the procedures in 34 C.F.R. part 300 subpart E (including the mediation and due process procedures) in order to obtain agreement or a ruling that the services may be provided to the child;
2. Will not be considered to be in violation of the requirement to make FAPE available to the child for the failure to provide the services for which the district requests consent; and
3. Is not required to convene an ARD meeting or develop an IEP for the child for the services.

*Revoking
Consent*

If, at any time after the provision of initial services, the parent of a child revokes consent in writing for the continued provision of services, the district:

1. May not continue to provide services to the child, but must provide prior written notice before ceasing services;
2. May not use the procedures in 34 C.F.R. part 300 subpart E in order to obtain agreement or a ruling that the services may be provided to the child;
3. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further services; and

4. Is not required to convene an ARD meeting or develop an IEP for further provision of services.

34 C.F.R. 300.300(b)

Reevaluations

A district shall ensure that each child with a disability is reevaluated if the district determines that the educational or related services needs of the child, including improved academic achievement and functional performance, warrant a reevaluation, or if the child's parent or teacher requests a reevaluation.

Reevaluation shall occur:

1. No more than once a year, unless the parent and the district agree otherwise; and
2. At least once every three years, unless the parent and district agree that a reevaluation is unnecessary.

A district shall obtain informed parental consent before conducting a reevaluation, except that informed parental consent is not needed if the district can demonstrate that it has taken reasonable measures to obtain consent and the child's parent has failed to respond.

20 U.S.C. 1414(a)(2), (c)(3); 34 C.F.R. 300.303

Evaluation for
Change in Eligibility

A district ~~shall~~**must** evaluate a child **with a disability** before determining that the child is no longer a child with a disability. However, an evaluation is not required before the termination of eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under state law; ~~If a child's eligibility terminates under the aforementioned circumstances, a district must provide a summary of academic achievement and functional performance must be provided, which shall include recommendations on how to assist the child in these circumstances meeting the child's postsecondary goals.~~ *34 C.F.R. 300.305(e); 20 U.S.C. 1414(c)(5); 34 C.F.R. 300.305(e), 19 TAC 89.1070(h)*

All students graduating under 19 Administrative Code 89.170 [see EIF] must be provided with a summary of academic achievement and functional performance as described above. This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 C.F.R. 300.305(e)(1), must be included as part of the summary for a student graduating under 19 Administrative Code 89.1070(b)(3)(A), (B), or (C) or (f)(4)(A), (B), or (C). 19 TAC 89.1070(g)

**Independent
Evaluation**

The parents have a right to obtain an independent educational evaluation of their child. If a parent requests an independent evaluation, a district shall provide the parents with information regarding where one can be obtained and the district's criteria for independent evaluations.

The results of a parent-initiated independent educational evaluation, whether at public or private expense, must be considered by the district if it meets the district's criteria, in any decision made with respect to providing FAPE to the child.

*At Public
Expense*

If a parent requests an independent evaluation at public expense, the district shall, without unnecessary delay, either:

1. File a due process complaint to request a hearing to show that its evaluation is appropriate; or
2. Ensure that an independent evaluation is provided at public expense, unless the district demonstrates that the evaluation obtained by the parent did not meet district criteria.

*At Private
Expense*

If a district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has a right to an independent evaluation, but not at public expense.

34 C.F.R. 300.502

**Prescription
Medication**

An employee of a district is prohibited from requiring a child to obtain a prescription for a substance covered under the federal Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation for special education, or receiving special education and related services.

An employee is not prohibited from consulting or sharing classroom-based observations with parents regarding a student's academic and functional performance, behavior in the classroom or school, or the need for evaluation for special education or related services.

20 U.S.C. 1412(a)(25)

**Admission, Review,
and Dismissal
Committee**

~~A~~Each district ~~shall~~must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted. The ARD committee ~~shall be~~is the individualized education program (IEP) team defined ~~at~~in federal law and regulations, including 34 C.F.R. 300.321.

~~Responsibilities of
ARD Committee~~

~~The responsibilities of the ARD committee and include:~~The district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the responsibilities listed at 19 Administrative Code 89.1050.

- ~~1. Evaluation, reevaluation, and determination of eligibility for special education and related services;~~
- ~~2. Placement of students with disabilities including disciplinary changes in placement;~~
- ~~3. Development of the student's IEP;~~
- ~~4. Development and implementation of service plans for students who have been placed by their parents in private schools and who have been designated to receive special education and related services;~~
- ~~5. Compliance with the least restrictive environment standard;~~
- ~~6. Compliance with state requirements for reading diagnosis and state assessments;~~
- ~~7. Development of junior high or middle school personal graduation plans;~~
- ~~8. Development of accelerated instruction under Education Code 28.0211 and intensive programs of instruction under Education Code 28.0213 [see EHBC];~~
- ~~9. Evaluation, placement, and coordination of services for students who are deaf, hard of hearing, blind, or visually impaired; and~~

~~Determining eligibility for extracurricular activities, under Education Code 33.081.~~

~~19 TAC 89.1050(a); 34 C.F.R. 300.116(a), .321(a)~~

**Committee
Members**

A district shall ensure that each ARD committee meeting includes all of the following:

1. The parents of a student with a disability;

2. At least one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);
3. At least one special education teacher or, if appropriate, at least one special education provider of the student;
4. A representative of the district who:
 - a. Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
 - b. Is knowledgeable about the general education curriculum; and
 - c. Is knowledgeable about the availability of resources of the district;
5. Other individuals who have knowledge or special expertise regarding the student at the discretion of the district or the parent;
6. An individual who can interpret the instructional implications of evaluation results, who may be a member of the ARD committee described in items 2–5;
7. The student, if appropriate;
8. For a student with an auditory impairment, including deaf-blindness, a teacher who is certified in the education of students with auditory impairments;
9. For a student with a visual impairment, including deaf-blindness, a teacher who is certified in the education of students with visual impairments;
10. For a student with limited English proficiency, a member of the language-proficiency assessment committee (LPAC), who may also be a member as described at items 2 or 3;
11. A representative of any participating agency likely to be responsible for providing transition services for a student, as appropriate, and with the consent of the student's parents or a student who has reached the age of majority; and
12. When considering initial or continued placement of a student in a career and technical education program, a representative from career and technical education, preferably the teacher.

20 U.S.C. 1414(d)(1)(B); 34 C.F.R. 300.321; 19 TAC 75.1023(d)(1), 89.1050(c)

A district member of the ARD committee shall not be required to attend an IEP meeting, in whole or in part, if the parent and the district agree in writing that the attendance is not necessary because the member's area of the curriculum or related services is not being modified or discussed during the meeting.

A district member of the ARD committee may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services if the parent, in writing, and the district consent to the excusal and the member submits, in writing, to the parent and the ARD committee, input into the development of the IEP before the meeting.

20 U.S.C. 1414(d)(1)(C); 34 C.F.R. 300.321(e)

*Regular
Education
Teacher*

If an ARD committee is required to include a regular education teacher, the regular education teacher must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's IEP. *Education Code 29.005(a)*

*Parent
Involvement*

A district shall take steps to ensure that one or both parents of a student with a disability are present at each ARD committee meeting or are afforded an opportunity to participate, including:

1. Notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend (the notice shall include the purpose, time, and location of the meeting, who will be in attendance, that persons with knowledge or special expertise may be invited by either the parent or the district, and that the Part C service coordinator or other representatives of the Part C system may be invited to the initial meeting for a child previously served under a Part C early childhood intervention program); and
2. Scheduling the meeting at a mutually agreed on time and place.

If the purpose of the meeting is to consider transition services, the notice must also indicate this purpose, indicate that the district will invite the student, and identify any other agency that will be invited to send a representative.

34 C.F.R. 300.322(a)-(b); 19 TAC 89.1050(d)

*Alternative
Means of
Meeting
Participation*

If neither parent can attend an ARD meeting, the district must allow other methods of participation, such as through telephone calls or video conferencing. *20 U.S.C. 1414(f); 34 C.F.R. 300.322(c); 19 TAC 89.1050(d)*

An ARD meeting may be conducted without a parent in attendance if a district is unable to convince the parents that they should attend, but the district shall have a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls, correspondence, or visits made or attempted and the results of any of those actions. *34 C.F.R. 300.322(d)*

Meetings

A district shall initiate and conduct ARD committee meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability. The committee shall review each child's IEP periodically, and, if appropriate, revise the IEP. A meeting must be held for this purpose at least once a year. The ARD committee must also determine the child's placement once a year.

A "meeting" does not include informal or unscheduled conversations involving district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provisions if those issues are not addressed in the child's IEP. A "meeting" also does not include preparatory activities that district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

20 U.S.C. 1414(d)(4); 34 C.F.R. 300.116(b)(1), .324(b), (c)(1), .501(b)(3)

Meeting at Parent's Request

Upon receipt of a written request for an ARD committee meeting from a parent, the school district must schedule and convene a meeting in accordance with the procedures in 19 Administrative Code 89.1050(d) or within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting. *19 TAC 89.1050(e)*

Written Notice

If a parent is unable to speak English, a district must provide the parent with a written notice regarding the ARD committee meeting required under 19 Administrative Code 89.1050(d) (notice for purposes of scheduling) or (e)(2) (notice explaining why the district refuses to convene a meeting) in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice. *19 TAC 89.1050(f)*

Transfer Students

In-State Transfers

When a student transfers to a new district within the state in the same school year and the parents verify that the student was receiving special education services in the previous district or the previous district verifies in writing or by telephone that the student was receiving special education services, the new school district

must meet the requirements of 34 C.F.R. 300.323(e) regarding the provision of special education services. The time line for completing the requirements outlined in 34 C.F.R. 300.323(e)(1) or (2) is 30 school days from the date the student is verified as being a student eligible for special education services.

Transfers from
Another State

When a student transfers from a district in another state in the same school year and the parents verify that the student was receiving special education services in the previous district or the previous district verifies in writing or by telephone that the student was receiving special education services, the new district must meet the requirements of 34 C.F.R. 300.323(f) regarding the provision of special education services. If the new district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the time lines established by 19 Administrative Code 89.1011(c) and (e). The time line for completing the requirements in 34 C.F.R. 300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the time line for completing the requirements outlined in 34 C.F.R. 300.323(f)(2) is 30 school days from the date the student is verified as being a student eligible for special education services.

19 TAC 89.1050(j)

Transfer of Records

The district in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous district.

The previous district shall take reasonable steps to promptly respond to the request from the new district and must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the tenth working day after the date a request for the information is received by the previous school district.

20 U.S.C. 1414(d)(2)(C)(ii); 34 C.F.R. 300.323(g); 19 TAC 89.1050(j)(3)

**Students Who Are
Homeless or in
Substitute Care**

When a student who is homeless or in substitute care transfers into a district after being referred by a previous district for a special education evaluation, the receiving district must accept the referral and ensure that any written report of a full individual and initial evaluation must be completed in accordance with the timelines established in 19 Administrative Code 89.1011 (relating to Full Individual and Initial Evaluation).

When a student who is already eligible for special education and is homeless or in substitute care transfers into a district during the school year, the receiving district must ensure that it meets the student transfer requirements of 19 Administrative Code 89.1050(j) (relating to the Admission, Review, and Dismissal Committee).

19 TAC 89.1615

Military Dependents

A district shall initially provide comparable services to a military student with disabilities based on his or her current IEP. This does not preclude the district from performing subsequent evaluations to ensure appropriate placement of the student. *Education Code 162.002 art. V, C* [See FDD]

Individualized Education Program

A district shall develop, review, and revise an IEP for each child with a disability. *20 U.S.C. 1412(a)(4); 34 C.F.R. 300.320(a)*

At the beginning of each school year, a district shall have in effect, for each child with a disability in its jurisdiction, an IEP. *20 U.S.C. 1414(d)(2)(A); 34 C.F.R. 300.323(a)*

The term “individualized education program” means a written statement for each student with a disability that documents the decisions of the ARD committee with respect to issues discussed at each committee meeting and includes:

1. A statement of the student's present levels of academic achievement and functional performance;
2. A statement of measurable annual goals, including academic and functional goals;
3. A description of how the student's progress toward the annual goals will be measured and when periodic reports on the progress of the student will be provided;
4. A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student;
5. A statement of the program modifications or supports for school personnel that will be provided for the student;
6. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in extracurricular and nonacademic activities;
7. The projected dates for initiation of services and modifications and the anticipated frequency, location, and duration of these services and modifications;

8. A statement of any individual appropriate and allowable accommodations that are necessary to measure the academic achievement and functional performance of the student on state or district-wide assessments;
9. If the ARD committee determines that the student must take an alternative assessment instead of a particular regular state or district-wide assessment, a statement of why the student cannot participate in the regular assessment and why the particular assessment selected is appropriate for the student;
10. If the ARD committee determines that a student is in need of extended school year (ESY) services, identification of the goals and objectives that will be addressed during ESY services;
11. Beginning not later than when a student reaches 14 years of age and updated annually thereafter, the ARD committee's consideration and decisions regarding the transition issues under 19 Administrative Code 89.1055(jh) [see EHBAD];
12. Beginning not later than the first IEP to be in effect when the student is 16, or younger if determined appropriate by the ARD committee, and updated annually thereafter, a statement of appropriate measurable postsecondary goals and transition services needed to assist the student in reaching those goals [see EHBAD];
13. Beginning not later than one year before the student reaches the age of 17, a statement that the student has been informed of the rights that will transfer to the student upon reaching the age of majority;
14. The date of the meeting;
15. The name, position, and signature of each member participating in the meeting; and
16. An indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the ARD committee.

20 U.S.C. 1414(d); 34 C.F.R. 300.320; Education Code 29.005(b-1), .011; 19 TAC 89.1055

The written statement of a student's IEP may be required to include only information included in the model form developed by TEA under Education Code 29.0051(a) and posted on the TEA website. A district may use the model form to comply with the requirements for an IEP under 20 U.S.C. 1414(d). *Education Code 29.005(f), .0051*

Behavioral
Intervention Plan

The ARD committee may determine that a behavior improvement plan or a behavioral intervention plan (BIP) is appropriate for a student for whom the committee has developed an IEP. If the committee makes that determination, the BIP shall be included as part of the student's IEP and provided to each teacher with responsibility for educating the student. *Education Code 29.005(g); 19 TAC 89.1055(g)*

Translation of IEP
into Native
Language

If the parent is unable to speak English and Spanish is the parent's native language, a district shall provide a written or audiotaped copy of the student's IEP translated into Spanish. If the parent's native language is other than Spanish or English, a district shall make a good faith effort to provide a written or audiotaped copy of the student's IEP translated into the parent's native language. *Education Code 29.005(d)*

A written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.

An audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.

If a parent's native language is not a written language, the district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.

Under 34 C.F.R. 300.322(f), a district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language as provided above.

19 TAC 89.1050(i)

Autism/Pervasive
Developmental
Disorder

For students with autism/pervasive developmental disorders, the following strategies shall be considered by the ARD committee, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

1. Extended educational programming;
2. Daily schedules reflecting minimal unstructured time and active engagement in learning activities;
3. In-home training and community-based training or viable alternatives that assist the student with the acquisition of social/behavioral skills;
4. Positive behavior support strategies based on relevant information;
5. Beginning at any age, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and postsecondary environments;
6. Parent/family training and support, provided by qualified personnel with experience in Autism Spectrum Disorders (ASD);
7. Suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence;
8. Communication interventions, including language forms and functions that enhance effective communication across settings;
9. Social skills supports and strategies based on social skills assessment/curriculum and provided across settings;
10. Professional educator/staff support; and
11. Teaching strategies based on peer-reviewed, research-based practices for students with ASD.

If the ARD committee determines that services are not needed in one or more of the areas in 1–11 above, the IEP shall include a statement reflecting that decision and the basis upon which the determination was made.

19 TAC 89.1055(e)–(f)

| | |
|-----------------------------------|--|
| <i>Visual Impairment</i> | If a district provides special education services to students with visual impairments, it shall have written procedures as required in Education Code 30.002(c)(10) (staff access to resources). <i>19 TAC 89.1075(b)</i> |
| Collaborative Process | All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. Decisions of the ARD committee concerning the required elements of the IEP shall be made by mutual agreement, if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration. |
| <i>Ten-Day Recess</i> | <p>When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when:</p> <ol style="list-style-type: none">1. The student's presence on campus represents a danger of physical harm to the student or others;2. The student has committed an expellable offense; or3. The student has committed an offense that may lead to placement in a disciplinary alternative education program. [See FOF] <p>These requirements do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.</p> <p>During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.</p> |
| <i>Failure to Reach Agreement</i> | <p>If a recess is implemented and the ARD committee still cannot reach mutual agreement, a district shall implement the IEP it has determined to be appropriate for the student. Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.</p> <p>If the IEP is not developed by agreement, the written statement of the program must include the basis of the disagreement. Each</p> |

member of the ARD committee who disagrees with the IEP developed by the committee is entitled to include a statement of disagreement in the written statement of the program.

Education Code 29.005(c); 19 TAC 89.1050(g)

**Modification of
Existing IEP**

Changes to the IEP may be made either by the entire ARD committee or by amending the IEP by agreement, rather than redrafting the entire IEP.

After the annual IEP meeting for a school year, the parent and district may agree not to convene an IEP meeting for the purposes of making changes to the IEP and instead may develop a written document to amend or modify the child's current IEP.

Upon request, a parent shall be provided with a revised copy of the IEP with amendments incorporated.

To the extent possible, a district shall encourage the consolidation of reevaluation meetings for the child and other ARD meetings for the child.

20 U.S.C. 1414(d)(3)(D)–(F); 34 C.F.R. 300.324(a)(4)–(6)

**Teacher Access to
IEP**

Each district must ensure that each teacher who provides instruction to a student with a disability has access to relevant sections of the student's current IEP, is informed of the teacher's specific responsibilities related to implementation of the IEP, and has an opportunity to request assistance regarding implementation of the student's IEP. *19 TAC 89.1075(c)*

**Teacher Request to
Review IEP**

Each district shall develop a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:

1. To request a review of the student's IEP;
2. To provide input in the development of the student's IEP;
3. That provides for a timely district response to the teacher's request; and
4. That provides for notification to the student's parent or legal guardian of that response.

Education Code 29.001(11); 19 TAC 89.1075(d)

**Private School—
District Placed**

Student Receives
IEP

If a district places a child with a disability in a private school or facility, or refers the child to a private school or facility, as a means of carrying out the requirements of the special education laws, the district shall ensure that the child is provided special education and related services, in accordance with an individualized education program (IEP), at no cost to the parents. *20 U.S.C. 1412(a)(10)(B)(i)*

**Private School—
Parent Placed**

When a parentally placed child with a disability is referred to a district, the district shall convene an admission, review, and dismissal (ARD) committee to determine whether the district can offer the child a free appropriate public education (FAPE). If the district determines that it can offer FAPE, it is not responsible for providing educational services to the child, except that the district must develop and implement an individualized services plan (ISP). *19 TAC 89.1096(b)*

Offer of FAPE
Rejected

*Student Receives
ISP*

If a district made FAPE available to a child with a disability and the parents elected to place the child in a private school or facility, the district is not required to pay for the cost of education, including special education and related services. However, the district must develop and implement an ISP. *20 U.S.C. 1412(a)(10)(C)(i); 34 C.F.R. 300.148(a)*

FAPE Offered but
Not Provided

Reimbursement

If the parents of a child with a disability, who previously received special education and related services under the authority of a district, enroll the child in a private school without the consent or referral by the district, a court or a hearing officer may require the district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the district had not made FAPE available to the child in a timely manner before the enrollment. This right of reimbursement is subject to the notice and other requirements set forth at *34 C.F.R. 300.148(d)*. *20 U.S.C. 1412(a)(10)(C)(ii); 34 C.F.R. 300.148(c)*

**Home School
Students**

A home school student is considered a private school student, for purposes of a district's obligations under IDEA, if the home school provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress. *19 TAC 89.1096(a)(2)*

**Individualized
Services Plan (ISP)**

Each parentally placed private school child with a disability who has been designated to receive services shall have an ISP that describes the specific special education and related services that a district will provide the child.

Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in

public schools. No parentally placed private school child has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

Decisions about the services that will be provided must be made in accordance with 34 C.F.R. 300.134(c) (consultation process) and 300.137(c) (attendance of private school representatives at services plan committee meetings). A district must make the final decisions with respect to the services to be provided.

34 C.F.R. 300.137, .138

Dual Enrollment

Parents shall have the right to “dual enroll” an eligible student age three or four in both the public school and a private school beginning on the student’s third birthday and continuing until the end of the school year in which the student turns five, or until the student is eligible to attend a district’s kindergarten program, whichever comes first, subject to the following:

1. The student’s ARD committee shall develop an IEP designed to provide the student with FAPE in the least restrictive environment (LRE).
2. From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the LRE and the policies and procedures of the district.
3. The district shall be responsible for employing and supervising the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the district.

19 TAC 89.1096(c)

Responsible District

The district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.

If the parents decline dual enrollment, but request an ISP, the district where the private school is located is responsible for development of the ISP for a student designated to receive services.

19 TAC 89.1096(c), (d)

Transportation

If a student has been placed by his or her parents in a private school or facility, a district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP. *19 TAC 89.1096(e)*

District Charter Schools

A district shall serve children with disabilities attending district charter schools in the same manner as it serves children with disabilities in its other schools and shall provide federal special education funds to those schools in the same manner as it provides those funds to its other schools. *20 U.S.C. 1413(a)(5); 34 C.F.R. 300.209(b)*

Residential Facilities

Identification of
Students

If a residential facility that is licensed by appropriate state agencies is located within the district's boundaries, the district must provide special education and related services to eligible students residing in the facility.

If, after contacting the facility to offer services to eligible students with disabilities, a district determines that educational services are provided through a charter school, approved non-public school, or a facility operated private school, the district is not required to provide services. However, a district shall annually contact the facility to offer services to eligible students with disabilities.

19 TAC 89.1001(c)

District Placements

A district may contract with a public or private facility, institution, or agency inside or outside of Texas for residential placement for a student with a disability when the ARD committee determines that a residential placement is necessary for the student to receive FAPE. Contracts for residential placement must be approved by the commissioner. *Education Code 29.008(a); 19 TAC 89.61(a)*[.1092](#)

If placement in a public or private residential program is necessary to provide special education and related services, the program, including non-medical care and room and board, must be at no cost to the parents. *34 C.F.R. 300.104*

If a district contracts for education services, rather than providing the services itself, it shall oversee the implementation of the student's IEP and shall annually reevaluate the appropriateness of the arrangement. *Education Code 29.008(d)*

Further, a district shall have the responsibilities set forth at 19 Administrative Code 89.61 [and 89.1092\(a\)\(4\)](#) regarding students in residential placements. [A district must contract with residential placements in accordance with 19 Administrative Code 89.1092.](#)

Notification

Within 30 calendar days from an ARD committee's decision to place a student in a residential education program, a district must electronically submit to TEA notice of and information regarding the placement in accordance with submission procedures specified by TEA.

19 TAC 89.1092(b)

Out-of-State
Placements

If a district contracts for an out-of-state residential placement, it shall do so in accordance with the rules for in-state residential placement, except that the facility shall be approved by the appropriate agency in the state in which the facility is located rather than by the Texas commissioner of education. *19 TAC 89.61(c)(3)*

**School for the Blind
and Visually
Impaired and School
for the Deaf**

A district shall share the cost of education (excluding the summer program) for each of its students enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf.

Before considering the student's educational placement for special education services, a district shall provide each parent of a student with visual or auditory impairments the following written information regarding the Texas School for the Deaf or Texas School for the Blind and Visually Impaired:

1. The availability of programs offered.
2. The eligibility and admissions requirements.
3. The student's rights to admission and to appeal admission decisions.

Education Code 30.003(a), .004(a); 19 TAC 89.62

A district may request services through the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf in accordance with 19 Administrative Code 89.1085. *19 TAC 89.1085*

Adult Prisons

If a child with a disability is convicted as an adult under state law and incarcerated in an adult prison, the child's ARD committee may modify the child's IEP or placement, notwithstanding the LRE requirements, if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

1. Federal requirements pertaining to participation of students with disabilities in general assessments;

2. Requirements concerning transition planning and transition services, if the children's eligibility will end, because of their age, before they will be released from prison.

20 U.S.C. 1414(d)(7)

**Transition Services
Defined**

“Transition services” means a coordinated set of activities for a child with a disability that:

1. Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.
2. Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests.
3. Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation.

20 U.S.C. 1401(34); 34 C.F.R. 300.43

**Individual Transition
Planning**

Not later than when a student reaches 14 years of age, the admission, review, and dismissal (ARD) committee must consider, and if appropriate, address the following issues in the individualized education program (IEP):

1. Appropriate student involvement in the student's transition to life outside the public school system;
2. If the student is younger than 18 years of age, appropriate involvement in the student's transition by the student's parents and other persons invited to participate by the student's parents or the school district in which the student is enrolled;
3. If the student is at least 18 years of age, involvement in the student's transition and future by the student's parents and other persons, if the parent or other person is invited to participate by the student or the school district in which the student is enrolled or has the student's consent to participate pursuant to a supported decision-making agreement under Estates Code, Chapter 1357;
4. Appropriate postsecondary education options, including preparation for postsecondary-level coursework;
5. An appropriate functional vocational evaluation;
6. Appropriate employment goals and objectives;

7. If the student is at least 18 years of age, the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives;
8. Appropriate independent living goals and objectives;
9. Appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student, such as a waiver program established under Section 1915(c), Social Security Act [42 U.S.C. Section 1396n(c)]; and
10. The use and availability of appropriate supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Estates Code Chapter 1357.

In accordance with 34 C.F.R. 300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:

1. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
2. The transition services, including courses of study, needed to assist the student in reaching the postsecondary goals developed under item 1.

A student's ARD committee shall annually review the issues described above and, if necessary, update the portions of the student's IEP that address those issues.

[See EHBAB regarding membership of ARD committee for transition services meetings]

20 U.S.C. 1414(d)(1)(A)(i)(VIII), 1414(d)(6); 34 C.F.R. 300.320(b); Education Code 29.011, .0111; 19 TAC 89.1055(h)-(j)-(l)

Transition and
Employment Guide

TEA is required to develop a transition and employment guide for students enrolled in special education programs and their parents

to provide information on statewide services and programs that assist in the transition to life outside the public school system. A school district shall:

1. Post the transition and employment guide on the district's website if the district maintains a website;
2. Provide written information and, if necessary, assistance to a student or parent regarding how to access the electronic version of the guide at:
 - a. The first meeting of the student's ARD committee at which transition is discussed; and
 - b. The first committee meeting at which transition is discussed that occurs after the date on which the guide is updated; and
3. On request, provide a printed copy of the guide to a student or parent.

Education Code 29.0112(a), (e)

Graduation

Graduation with a regular high school diploma under 19 Administrative Code 89.1070(b)(1), (b)(~~23~~)(D), (~~g~~)(1), (~~g~~)(2), (~~g~~)(3) or (~~g~~)(4)(D) terminates a student's eligibility for special education services. For students who receive a diploma according to 19 Administrative Code 89.1070(b)(2), (~~b~~)(3)(A), (B), or (C) or (~~g~~)(4)(A), (B), or (C), the ARD committee ~~shall~~**must** determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age requirements. [19 TAC 89.1070\(a\), \(j\)](#) [See EHBAA]

Graduation from high school with a regular diploma constitutes a change in placement that requires written prior notice to parents.

A district is not required to conduct an evaluation before termination of eligibility due to graduation from secondary school with a regular high school diploma or due to exceeding the age eligibility for a FAPE under state law.

A district shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

[See EIF]

~~20 U.S.C. 1414(c)(5); 34 C.F.R. 300.102(a)(3), .305(e)(2); 19 TAC 89.1070(a), (k)~~

**Compensatory
Education Allotment**

Census Block

On a schedule determined by the commissioner of education and in accordance with Education Code 48.104, each district shall report to the agency the census block group in which each student enrolled in the district who is educationally disadvantaged resides.
Education Code 48.104(i)

Use

At least 55 percent of the district's compensatory education funds must be used to:

1. Fund supplemental programs and services designed to eliminate any disparity in performance on assessment instruments administered under Education Code Chapter 39, Subchapter B or disparity in the rates of high school completion between:
 - a. Students who are educationally disadvantaged and students who are not educationally disadvantaged; and
 - b. Students at risk of dropping out of school, as defined below, and all other students; or
2. Support a program eligible under Title I of the Elementary and Secondary Education Act of 1965 [see AID], and its subsequent amendments, and by federal regulations implementing that Act.

Education Code 48.104(k)

Dropout Prevention
Strategies

A district with a high dropout rate, as determined by the commissioner, shall submit a plan to the commissioner describing the manner in which the district intends to use its compensatory education allotment for developing and implementing research-based strategies for dropout prevention.

A district shall submit the plan not later than December 1 of each school year preceding the school year in which the district will receive the compensatory education allotment to which the plan applies.

A district may not spend or obligate more than 25 percent of the district's compensatory education allotment unless the commissioner approves the plan.

A district's plan shall:

1. Design a dropout recovery plan that includes career and technology education courses or technology applications courses that lead to industry or career certification;
2. Integrate into the dropout recovery plan research-based strategies to assist students in becoming able academically to pursue postsecondary education, including:

- a. High-quality, college readiness instruction with strong academic and social supports;
 - b. Secondary to postsecondary bridging that builds college readiness skills, provides a plan for college completion, and ensures transition counseling; and
 - c. Information concerning appropriate supports available in the first year of postsecondary enrollment to ensure postsecondary persistence and success, to the extent funds are available for the purpose; and
3. Plan to offer advanced academic and transition opportunities, including dual credit courses and college preparatory courses, such as advanced placement courses.

A district may enter into a partnership with a public junior college in accordance with Education Code 29.402 [see GNC] in order to fulfill a plan.

Any program designed to fulfill a plan must comply with the requirements of Education Code 29.081(e) and (f).

Education Code 29.918

**Educationally
Disadvantaged
Students**

Student Eligibility

To be considered educationally disadvantaged in order to be counted to generate the compensatory education allotment pursuant to Education Code 48.104, a student must meet the income requirements for eligibility under the National School Lunch Program (NSLP), authorized by 42 U.S.C. 1751, et seq.

Districts may use the following approved methods for the purpose of receiving the compensatory education allotment pursuant to Education Code 48.104:

1. Parent certification, where the parent or guardian asserts meeting the income requirements for eligibility;
2. Direct certification, where the process by which eligible children are certified for free meals without the need for a household application based on household participation in one or more federal assistance programs; or
3. Direct verification, where public records are used to verify a student's eligibility for free or reduced-price meals when verification of student eligibility is required.

19 TAC 61.1027(a)

Virtual School
Network

Districts must request prior approval from the commissioner to claim students receiving a full-time virtual education through the

state virtual school network in their counts of educationally disadvantaged students. The request must include a plan detailing the enhanced services to be delivered to full-time state virtual school network students and submitted in a manner and with a deadline specified by the commissioner. *19 TAC 61.1027(b)(3)(B)*

Definition of At-Risk Student

“Student at risk of dropping out of school” includes each student who is under 26 years of age and who:

1. Was not advanced from one grade level to the next for one or more school years, unless the student did not advance from prekindergarten or kindergarten to the next grade level only as a result of the request of the student’s parent;
2. If the student is in grades 7–12, did not maintain an average equivalent to 70 on a scale of 100 in two or more subjects in the foundation curriculum during a semester in the preceding or current school year, or is not maintaining such an average in two or more subjects in the foundation curriculum in the current semester;
3. Did not perform satisfactorily on a state assessment instrument and who has not in the previous or current school year subsequently performed on that instrument or another appropriate instrument at a level equal to at least 110 percent of the level of satisfactory performance on that instrument;
4. If the student is in prekindergarten, kindergarten, or grades 1–3, did not perform satisfactorily on a readiness test or assessment instrument administered during the current school year;
5. Is pregnant or is a parent;
6. Has been placed in a DAEP in accordance with Education Code 37.006 during the preceding or current school year;
7. Has been expelled in accordance with Education Code 37.007 during the preceding or current school year;
8. Is currently on parole, probation, deferred prosecution, or other conditional release;
9. Was previously reported through the Public Education Information Management System (PEIMS) to have dropped out of school;
10. Is a student of limited English proficiency, as defined by Section 29.052;

11. Is in the custody or care of the Department of Family and Protective Services or has, during the current school year, been referred to the department by a school official, officer of the juvenile court, or law enforcement official;
12. Is homeless [see FD];
13. Resided in the preceding school year or resides in the current school year in a residential placement facility in a district, including a detention facility, substance abuse treatment facility, emergency shelter, psychiatric hospital, halfway house, cottage home operation, specialized child-care home, or general residential operation; or
14. Has been incarcerated, or has a parent or guardian who has been incarcerated, within the lifetime of the student, in a penal institution as defined by Penal Code 1.07.

Education Code 29.081(d)(1)

Regardless of the student's age, a student who participates in an adult education program provided under a high school diploma and industry certification charter school program is considered a "student at risk of dropping out of high school." *Education Code 29.081(d)(2)*

Local Eligibility
Criteria

In addition to students described above, a student who satisfies local eligibility criteria adopted by a board may receive compensatory education services. The number of students receiving services under local eligibility criteria during a school year may not exceed ten percent of the number of students described above who received services from the district during the preceding school year. *Education Code 29.081(g)*

**Compensatory,
Intensive, and
Accelerated
Instruction**

A district shall use student performance data from state basic skills assessment instruments and achievement tests to design and implement appropriate compensatory, intensive, or accelerated instructional services for students in the district's schools that enable the students to perform at grade level at the conclusion of the next regular school term. *Education Code 29.081(a)*

Accelerated
Instruction

A district shall provide accelerated instruction to an enrolled student who has taken an end-of-course assessment instrument and has not performed satisfactorily or who is at risk of dropping out of school.

A district shall offer before the next scheduled administration of the assessment instrument, without cost to the student, additional accelerated instruction to each student in any subject in which the

student failed to perform satisfactorily on an end-of-course assessment instrument required for graduation.

A district that is required to provide accelerated instruction must separately budget sufficient funds for that purpose. [See CE]

A district shall evaluate the effectiveness of accelerated instruction programs and annually hold a public hearing to consider the results.

Education Code 29.081(b), (b-1), (b-2), (b-3), 39.025(b-1)

Each time a student fails to perform satisfactorily on an assessment instrument administered under Education Code 39.023(c), the district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area, using funds appropriated for accelerated instruction under Education Code 28.0211. Accelerated instruction may require participation of the student before or after normal school hours and may include participation at times of the year outside normal school operations.
Education Code 28.0217

Effectiveness

A district shall evaluate and document the effectiveness of the accelerated instruction in reducing any disparity in performance on state assessment instruments or disparity in the rates of high school completion between students at risk of dropping out of school and all other district students. *Education Code 29.081(c)*

**Dropout Recovery
Education Programs**

A district may use a private or public community-based dropout recovery education program to provide alternative education programs for students at risk of dropping out of school. The program may be offered at a campus or through the use of an online program that leads to a high school diploma and prepares the student to enter the workforce. A campus-based dropout recovery education program must meet the criteria set forth at Education Code 29.081(e-1)(1)–(5). An online dropout recovery education program must meet the criteria set forth at Education Code 29.081(e-2)(1)–(8).

Students in attendance at a dropout recovery education program shall be included in a district's average daily attendance for funding purposes.

Education Code 29.081(e)–(f)

Communities in
Schools

An elementary or secondary school receiving funding under Education Code 33.156 shall participate in the Communities in Schools (CIS) program if the number of students enrolled in the school who are at risk of dropping out of school is equal to at least ten percent

of the number of students in average daily attendance at the school, as determined by TEA. *Education Code 33.157*

**Optional Extended
Year Program**

A district may set aside an amount from the district's compensatory education allotment or may apply to the agency for funding of an extended year program. *Education Code 29.082(a); 19 TAC 105.1001*

**Optional Flexible
Year Program**

A district may provide an optional flexible year program (OFYP) for students who did not or are not likely to perform successfully on state assessment instruments or who would not otherwise be promoted to the next grade level. *Education Code 29.0821; 19 TAC 129.1029*

**Optional Flexible
School Day Program**

Notwithstanding Education Code 25.081 or 25.082, a district may apply to the commissioner to provide a flexible school day program (OFSDP) for students who:

1. Have dropped out of school or are at risk of dropping out of school as defined by Education Code 29.081;
2. Attend a campus that is implementing an innovative redesign of the campus or an early college high school under a plan approved by the commissioner; or
3. As a result of attendance requirements under Education Code 25.092, will be denied credit for one or more classes in which the students have been enrolled.

Education Code 29.0822

A district may apply to the commissioner to provide an OFSDP for students, in accordance with 19 Administrative Code 129.1027.

A board must approve the application. The board must include the OFSDP as an item on the regular agenda for a board meeting ~~providing options for public input concerning the proposed application~~ [in compliance with 19 Administrative Code 129.1027\(h\)\(2\)](#) before applying to operate an OFSDP. The application shall include the information described in 19 Administrative Code 129.1027.

19 TAC 129.1027(c)

Tutorial Services

A district may provide tutorial services at district schools. If a district provides tutorial services, it shall require a student whose grade in a subject for a reporting period is lower than the equivalent of 70 on a scale of 100 to attend tutorials. [See EC for provisions on loss of class time.]

A district may provide transportation services to accommodate students who are required to attend tutorials and who are eligible for regular transportation.

Education Code 29.084

**Basic Skills
Programs**

A district may apply to the commissioner for funding of basic skills programs for students in grade 9 who are at risk of not earning sufficient credit or who have not earned sufficient credit to advance to grade 10 and who fail to meet minimum skills levels established by the commissioner.

With the consent of a student's parent or guardian, a district may assign a student to the basic skills program.

A basic skills program may not exceed 210 instructional days and must meet the requirements set forth at Education Code 29.086.

Education Code 29.086(a)

**After-School and
Summer Intensive
Mathematics and
Science Programs**

A district may provide an intensive after-school program or an intensive program during the period that school is recessed for the summer to provide mathematics and science instruction to:

1. Students who are not performing at grade level in mathematics or science to assist those students in performing at grade level;
2. Students who are not performing successfully in a mathematics course or science course to assist those students in successfully completing the course; or
3. Other students as determined by the district.

Before providing a program, a board must adopt a policy for:

1. Determining student eligibility for participating in the program that:
 - a. Prescribes the grade level or course a student must be enrolled in to be eligible; and
 - b. Provides for considering teacher recommendations in determining eligibility;
2. Ensuring that parents of or persons standing in parental relation to eligible students are provided notice of the program;
3. Ensuring that eligible students are encouraged to attend the program;

4. Ensuring that the program is offered at one or more locations in the district that are easily accessible to eligible students; and
5. Measuring student progress on completion of the program.

Education Code 29.088, .090; 19 TAC 102.1041

Mentoring Services Program

A district may provide a mentoring services program to students at risk of dropping out of school. A board may arrange for any public or nonprofit community-based organization to come to the district's schools and implement the program.

A board shall obtain the consent of a student's parent or guardian before allowing the student to participate in the program.

Education Code 29.089

Accelerated Reading Instruction Program

A district shall implement an accelerated reading instruction program that provides reading instruction that addresses reading deficiencies to each student in kindergarten, first grade, or second grade who is determined, on the basis of reading instrument results [see EKC], to be at risk for dyslexia or other reading difficulties. The district shall determine the form, content, and timing of the program.

A district shall provide additional reading instruction and intervention to each student given the seventh grade reading assessment [see EKC], as appropriate to improve the student's reading skills in the relevant areas identified through the assessment instrument.

Education Code 28.006(g), (g-1), (k)

Intensive Program of Instruction

State Assessments

A district shall offer an intensive program of instruction to a student who does not perform satisfactorily on a state assessment instrument or is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade 9, as determined by the district.

The program shall be designed to:

1. Enable the student to:
 - a. To the extent practicable, perform at the student's grade level at the conclusion of the next regular school term; or
 - b. Attain a standard of annual growth specified by a district and reported by the district to TEA; and
2. If applicable, carry out the purposes of Education Code 28.0211. [See EIE]

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| Students Receiving Special Education Services | <p>For a student in a special education program who does not perform satisfactorily on an assessment instrument administered under Education Code 39.023(a), (b), or (c), the student's admission, review, and dismissal committee shall design the program to:</p> <ol style="list-style-type: none">1. Enable the student to attain a standard of annual growth on the basis of the student's individualized education program (IEP); and2. If applicable, carry out the purposes of Education Code 28.0211. [See EIE] |
| Graduation Requirements | <p>A district shall use funds appropriated by the legislature for an intensive program of instruction to plan and implement intensive instruction and other activities aimed at helping a student satisfy state and local high school graduation requirements.</p> |
| No Cause of Action | <p>A district's determination of the appropriateness of an intensive program of instruction for a student is final and does not create a cause of action.</p> <p><i>Education Code 28.0213</i></p> |
| College Preparatory Courses | <p>Each district shall partner with at least one institution of higher education to develop and provide courses in college preparatory mathematics and English language arts. The courses must be designed:</p> <ol style="list-style-type: none">1. For students at the 12th grade level whose performance on:<ol style="list-style-type: none">a. An end-of-course assessment instrument required under Education Code 39.023(c) does not meet college readiness standards; orb. Coursework, a college entrance examination, or an assessment instrument designated under Education Code 51.334 [Texas Success Initiative (TSI) assessment] indicates that the student is not ready to perform entry-level college coursework; and2. To prepare students for success in entry-level college courses. <p>A course must be provided on the campus of the high school offering the course or through distance learning or as an online course provided through an institution of higher education with which the district partners.</p> |
| Faculty | <p>Appropriate faculty of each high school offering courses and appropriate faculty of each institution of higher education with which the district partners shall meet regularly as necessary to ensure that each course is aligned with college readiness expectations.</p> |

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| Notice | Each district shall provide a notice to each eligible student and the student's parent or guardian regarding the benefits of enrolling in a course. |
| Credit Earned | A student who successfully completes an English language arts course may use the credit earned toward satisfying the advanced English language arts curriculum requirement for the foundation high school program under Education Code 28.025(b-1)(1). A student who successfully completes a mathematics course may use the credit earned in the course toward satisfying an advanced mathematics curriculum requirement under Education Code 28.025 after completion of the mathematics curriculum requirements for the foundation high school program under Education Code 28.025(b-1)(2). |
| Dual Credit | A course may be offered for dual credit at the discretion of the institution of higher education with which a district partners. |
| Instructional Materials | Each district, in consultation with each institution of higher education with which the district partners, shall develop or purchase instructional materials for a course consistent with Education Code Chapter 31. The instructional materials must include technology resources that enhance the effectiveness of the course and draw on established best practices. <i>Education Code 28.014</i> |
| End-of-Course Exam | A student enrolled in a college preparatory mathematics or English language arts course under Education Code 28.014 who satisfies the TSI college readiness benchmarks on an assessment instrument administered at the end of the course satisfies the requirements concerning and is exempt from the administration of the Algebra I or the English I and English II end-of-course assessment instruments, as applicable, as prescribed by Education Code 39.023(c) [see EKB], even if the student did not perform satisfactorily on a previous administration of the applicable end-of-course assessment instrument. A student who fails to perform satisfactorily on the assessment instrument may retake that assessment instrument or may take the appropriate end-of-course assessment instrument. <i>Education Code 39.025(a-1)</i> |

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- High School Diploma** A student may graduate and receive a diploma only if the student:
1. Successfully completes the curriculum requirements identified by the State Board of Education (SBOE) [see State Graduation Requirements, below], has performed satisfactorily on applicable state assessments [see EKB], and complies with the financial aid application requirements in Education Code 28.0256 [see below]; or
 2. Successfully completes an individualized education program (IEP) developed under Education Code 29.005. [See EHBAB]
- Education Code 28.025(c)*

Note: Education Code 28.0256 applies beginning with students enrolled at the 12th grade level during the 2021–22 school year.

- FAFSA Required** Before graduating from high school, each student must complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA).
- A student is not required to comply with the above provision if:
1. The student's parent or other person standing in parental relation submits a signed form indicating that the parent or other person authorizes the student to decline to complete and submit the financial aid application;
 2. The student signs and submits the form described above on the student's own behalf if the student is 18 years of age or older or the student's disabilities of minority have been removed for general purposes under Family Code Chapter 31; or
 3. A school counselor authorizes the student to decline to complete and submit the financial aid application for good cause, as determined by the school counselor.

A district shall adopt a form to be used for purposes of this provision. The form must be approved by the Texas Education Agency (TEA) and made available in English, Spanish, and any other language spoken by a majority of the students enrolled in a bilingual education or special language program under Education Code Subchapter B, Chapter 29, in the district.

If a school counselor notifies a district whether a student has complied with this section for purposes of determining whether the student meets high school graduation requirements under Education Code 28.025, the school counselor may only indicate whether the

student has complied with this section and may not indicate the manner in which the student complied.

Education Code 28.0256

Note: Education Code 28.0258 and 19 Administrative Code 74.1025 related to individual graduation committees expire September 1, 2023.

Individual
Graduation
Committee

Without complying with the requirements above, a student may receive a diploma if the person is eligible for a diploma as determined by an individual graduation committee (IGC) established under Education Code 28.0258. *Education Code 28.025(c-6)*

A student receiving special education services is not subject to the IGC requirements in Education Code 28.0258 or 19 Administrative Code 74.1025. A student's admission, review, and dismissal (ARD) committee determines whether a student is required to achieve satisfactory performance on an end-of-course (EOC) assessment to graduate. *19 TAC 74.1025(n)* [See EHBAB]

For each 11th or 12th grade student who has failed to comply with the EOC assessment instrument performance requirements under Education Code 39.025 for not more than two courses, the district shall establish an IGC at the end of or after the student's 11th grade year to determine whether the student may qualify to graduate. A student may not qualify to graduate as a result of an IGC decision before the student's 12th grade year.

The IGC shall be composed of:

1. The principal or principal's designee;
2. For each EOC assessment instrument on which the student failed to perform satisfactorily, the teacher of the course;
3. The department chair or lead teacher supervising the teacher(s) above; and
4. As applicable:
 - a. The student's parent or person standing in parental relation to the student;
 - b. A designated advocate if the parent is unable to serve; or
 - c. The student, at the student's option, if the student is at least 18 years of age or is an emancipated minor.

The superintendent shall establish procedures for convening the committee.

The district shall provide an appropriate translator, if available, for a parent, advocate, or student who is unable to speak English.

Education Code 28.0258(a)–(c), (c-2); 19 TAC 74.1025(b)

A district may not establish an initial IGC for eligible students after June 10 or before the start of the next school year. Once the IGC has been established, it is the original IGC for that student.

If a student leaves a district after an original IGC has been established and before that original IGC awards a high school diploma to the student, any other district that later enrolls the student shall request information from the student's original IGC of record and shall implement the original IGC recommendations to the extent possible.

*Alternate
Members*

In the event that the teacher identified in item 2 above is unavailable, the principal shall designate as an alternate member of the committee a teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is most familiar with the student's performance in that subject area.

In the event that the individual identified above in item 3 above is unavailable, the principal shall designate as an alternate member of the committee an experienced teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is familiar with the content of and instructional practices for the applicable course.

In the event that the student's parent or person standing in parental relation to the student is unavailable to participate in the IGC, the principal shall designate an advocate with knowledge of the student to serve as an alternate member of the committee.

19 TAC 74.1025(c), (e), (g)–(i)

Notice

A district shall ensure a good faith effort is made to timely notify the appropriate person described under item 4 above of the time and place for convening the IGC and the purpose of the committee. The notice must be provided in person or by regular mail or email; clear and easy to understand; and written in English, in Spanish, or, to the extent practicable, in the native language of the appropriate person. *Education Code 28.0258(d)*

*Curriculum
Requirements*

To be eligible to graduate and receive a high school diploma from the IGC, a student must successfully complete the curriculum requirements required for high school graduation. [See State Graduation Requirements, below] *Education Code 28.0258(e)*

*Additional
Requirements to
Graduate*

A student's IGC shall recommend additional requirements by which the student may qualify to graduate, including additional remediation; and for each EOC assessment instrument on which the student failed to perform satisfactorily:

1. The completion of a project related to the subject area of the course that demonstrates proficiency in the subject area; or
2. The preparation of a portfolio of work samples in the subject area of the course, including work samples from the course that demonstrate proficiency in the subject area.

A student may submit to the IGC coursework previously completed to satisfy a recommended additional requirement.

Education Code 28.0258(f), (g)

In determining whether a student is qualified to graduate, the committee shall consider the criteria at Education Code 28.0258(h) and any other academic information designated for consideration by the board. After considering the criteria, the committee may determine that the student is qualified to graduate. A student may graduate and receive a high school diploma on the basis of the committee's decision only if the student successfully completes all additional requirements recommended by the committee, the student meets applicable curriculum requirements, and the committee's vote is unanimous. The decision of a committee is final and may not be appealed. *Education Code 28.0258(i)*

*English
Language
Learners*

For provisions related to an IGC and English language learners (ELL), see EKB.

Students Who
Entered Grade 9
Before the 2011–12
School Year

In accordance with Education Code 28.02541, a district may award a high school diploma to an individual who:

1. Entered grade 9 before the 2011–12 school year;
2. Successfully completed the curriculum requirements for high school graduation applicable when the individual entered grade 9;
3. Has not performed satisfactorily on the exit-level assessment instrument or part of an assessment instrument required for high school graduation, including an alternative assessment instrument offered under Education Code 39.025(c-2);

4. Has been administered at least three times the required subject-area test(s) for which the individual has not performed satisfactorily on the exit-level assessment instrument applicable to the individual when the individual entered grade 9; and
5. Meets the alternative requirements for graduation in accordance with 19 Administrative Code 74.1027(c) or the local alternative requirements approved by the board in accordance with 19 Administrative Code 74.1027(d).

19 TAC 74.1027(a); Education Code 28.02541

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| <i>District Determination</i> | The district in which the individual is enrolled or was last enrolled shall determine whether the individual may qualify to graduate and receive a high school diploma on the basis of the alternative requirements for graduation. <i>19 TAC 74.1027(b)</i> |
| <i>Alternative Requirements</i> | The alternative requirements for graduation are listed at 19 Administrative Code 74.1027(c). |
| <i>Local Alternative Requirements</i> | With approval by the board, a district may develop recommendations for local alternative requirements if the requirements would allow an individual to demonstrate proficiency in the content related to an examination for which the individual has not performed satisfactorily. <i>19 TAC 74.1027(d)</i> |
| <i>Appeals</i> | A decision regarding whether the individual qualifies to graduate and receive a high school diploma is final and may not be appealed. <i>19 TAC 74.1027(e); Education Code 28.02541</i> |
| <i>Documentation</i> | The district shall maintain documentation to support the decision to award or not award an individual a high school diploma. <i>19 TAC 74.1027(f)</i> |
| Special Education | A student receiving special education services who successfully completes the requirements of his or her IEP, including performance on a state assessment required for graduation, shall receive a high school diploma. A student's ARD committee shall determine if the student will be required to meet satisfactory performance on an assessment for purposes of graduation. <i>19 TAC 101.3023(a)</i> [See Graduation of Students Receiving Special Education Services, below, and EKB] |
| Posthumous Diploma | Beginning with students who would have graduated at the end of the 2019–20 school year, and on request of the student's parent, a district shall issue a high school diploma posthumously to each student who died while enrolled in the district at the end of the school year in which the student was expected to graduate under the regular schedule of school attendance. The high school diploma may |

not be issued before the graduation date of the class in which the student was enrolled at the time of death.

Exception

A district is not required to issue a posthumous diploma if the student was convicted of a felony offense under Title 5 or 6, Penal Code, or adjudicated as having engaged in conduct constituting a felony offense under Title 5 or 6, Penal Code.

Education Code 28.0254

Diplomas for
Veterans

Notwithstanding any other provision of this policy, a district may issue a high school diploma to a person who is an honorably discharged member of the armed forces of the United States; was scheduled to graduate from high school after 1940 and before 1975 or after 1989; and left school after completing the sixth or a higher grade, before graduating from high school, to serve in:

1. World War II, the Korean War, the Vietnam War, the Persian Gulf War, the Iraq War, or the war in Afghanistan; or
2. Any other war formally declared by the United States, military engagement authorized by the United States Congress, military engagement authorized by a United Nations Security Council resolution and funded by the United States Congress, or conflict authorized by the president of the United States under the War Powers Resolution of 1973, 50 U.S.C. 1541, et seq.

Education Code 28.0251

**Personal Graduation
Plan**

Junior High or
Middle School PGP

A principal of a junior high or middle school shall designate a school counselor, teacher, or other appropriate individual to develop and administer a personal graduation plan (PGP) for each student enrolled in the junior high or middle school who:

1. Does not perform satisfactorily on a state assessment instrument; or
2. Is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade level 9, as determined by a district.

A PGP must:

1. Identify educational goals for the student;
2. Include diagnostic information, appropriate monitoring and intervention, and other evaluation strategies;
3. Include an intensive instruction program described in Education Code 28.0213 [see EHBC];

4. Address participation of the student’s parent or guardian, including consideration of the parent’s or guardian’s educational expectations for the student; and
5. Provide innovative methods to promote the student’s advancement, including flexible scheduling, alternative learning environments, online instruction, and other interventions that are proven to accelerate the learning process and have been scientifically validated to improve learning and cognitive ability.

Education Code 28.0212

*Students
Receiving
Special
Education
Services*

For a student receiving special education services, the student’s ARD committee and the district are responsible for developing the student’s PGP.

A student’s IEP developed under Education Code 29.005 may be used as the student’s PGP.

Education Code 28.0212(c); 19 TAC 89.1050(a) [See EHBAB]

High School PGP

A principal of a high school shall designate a school counselor or school administrator to review PGP options with each student entering grade 9 together with that student’s parent or guardian. The PGP options reviewed must include the distinguished level of achievement and endorsements.

Before the conclusion of the school year, the student and the student’s parent or guardian must confirm and sign a PGP for the student that identifies a course of study that:

1. Promotes college and workforce readiness and career placement and advancement; and
2. Facilitates the student’s transition from secondary to postsecondary education.

A district may not prevent a student and the student’s parent or guardian from confirming a PGP that includes pursuit of a distinguished level of achievement or an endorsement.

A student may amend the student’s PGP after the initial confirmation of the plan. If a student amends the student’s PGP, the school must send written notice to the student’s parents regarding the change.

TEA must make available to a district information that explains the advantages of the distinguished level of achievement described by Education Code 28.025(b-15) and each endorsement described by

Education Code 28.025(c-1). A district, in turn, shall publish the information from TEA on the internet website of the district and ensure that the information is available to students in grades nine and above and the parents or legal guardians of those students in the language in which the parents or legal guardians are most proficient.

A district is required to provide this information in the language in which the parents or legal guardians are most proficient only if at least 20 students in a grade level primarily speak that language.

Education Code 28.02121

Early Graduation

A parent is entitled to request, with the expectation that the request will not be unreasonably denied, that the parent’s child be permitted to graduate from high school earlier than the child would normally graduate, if the child completes each course required for graduation. The decision of a board concerning the request is final and may not be appealed. *Education Code 26.003(a)(3)(C), (b)* [See FMH, FNG]

State Graduation Requirements

Note: For current state graduation requirements, including those for students who entered grade 9 before the 2007–08 school year but that are not otherwise referenced in this policy, see Education Code 28.025 and 19 Administrative Code Chapter 74.

Students Entering
Grade 9

To receive a high school diploma, a student entering grade 9 in the 2014–15 school year and thereafter must complete:

1. Requirements of the foundation high school program under 19 Administrative Code 74.12 [see Foundation High School Program, below];
2. Testing requirements for graduation under 19 Administrative Code Chapter 101 [see EKB]; and
3. Demonstrated proficiency, as determined by the district, in delivering clear verbal messages; choosing effective nonverbal behaviors; listening for desired results; applying valid critical-thinking and problem-solving processes; and identifying, analyzing, developing, and evaluating communication skills needed for professional and social success in interpersonal situations, group interactions, and personal and professional presentations.

A student shall enroll in the courses necessary to complete the curriculum requirements for the foundation high school program and the curriculum requirements for at least one endorsement.

Education Code 28.025(c); 19 TAC 74.11(a), (c)

Foundation High School Program

A student must earn at least 22 credits to complete the foundation high school program and must demonstrate proficiency in the following core courses:

1. English language arts—4 credits;
2. Mathematics—3 credits;
3. Science—3 credits;
4. Social Studies—3 credits;
5. Languages other than English—2 credits;
6. Physical Education—1 credit;
7. Fine Arts—1 credit; and
8. Elective courses—5 credits.

19 TAC 74.12

Endorsements

A student shall specify in writing an endorsement the student intends to earn upon entering grade 9. *19 TAC 74.13(a)*

A student may earn any of the following endorsements:

1. Science, technology, engineering, and mathematics (STEM);
2. Business and industry;
3. Public services;
4. Arts and humanities; and
5. Multidisciplinary studies.

A district must make at least one endorsement available to students. A district that offers only one endorsement curriculum must offer multidisciplinary studies.

To earn an endorsement a student must demonstrate proficiency in the curriculum requirements for the foundation high school program and, in accordance with 19 Administrative Code 74.13(e), earn:

1. A fourth credit in mathematics;
2. An additional credit in science; and

3. Two additional elective credits.

A course completed as part of the four courses needed to satisfy an endorsement requirement may also satisfy a requirement under the foundation high school program, including an elective requirement. The same course may count as part of the set of four courses for more than one endorsement.

A district shall permit a student to enroll in courses under more than one endorsement before the student's junior year and to choose, at any time, to earn an endorsement other than the endorsement the student previously indicated.

A student must earn at least 26 credits to earn an endorsement, but a student is not entitled to remain enrolled to earn more than 26 credits.

A district may define advanced courses and determine a coherent sequence of courses for an endorsement area, provided that prerequisites in 19 Administrative Code Chapters 110–118, 126, 127, and 130 are followed.

Education Code 28.025; 19 TAC 74.13

Exception

A student may graduate under the foundation high school program without earning an endorsement if, after the student's sophomore year:

1. The student and the student's parent or person standing in parental relation to the student are advised by a school counselor of the specific benefits of graduating from high school with one or more endorsements; and
2. The student's parent or person standing in parental relation to the student files with a school counselor written permission, on a form adopted by TEA, allowing the student to graduate under the foundation high school program without earning an endorsement.

19 TAC 74.11(d)

*Distinguished
Level of
Achievement*

A student may earn a distinguished level of achievement by successfully completing the curriculum requirements for the foundation high school program and the curriculum requirements for at least one endorsement, including four credits in science and four credits in mathematics, including Algebra II. *19 TAC 74.11(e)*

*Algebra II
Notification*

Not later than September 1 of each school year, a district shall notify by regular mail or email the parent of or other person standing in parental relation to each student enrolled in grade 9 or above that the student is not required to complete an Algebra II course to

graduate under the foundation high school program. The notification must include information regarding the potential consequences to a student of not completing an Algebra II course, including the impact on eligibility for:

1. Automatic college admission under Education Code 51.803; and
2. Certain financial aid authorized under Title 3 of the Education Code.

Education Code 28.02123

Prerequisites

A student may not be enrolled in a course that has a required prerequisite unless:

1. The student has completed the prerequisite course(s);
2. The student has demonstrated equivalent knowledge as determined by the district; or
3. The student was already enrolled in the course in an out-of-state, an out-of-country, or a Texas nonpublic school and transferred to a Texas public school prior to successfully completing the course.

A district may award credit for a course a student completed without having met the prerequisites if the student completed the course in an out-of-state, an out-of-country, or a Texas nonpublic school where there was not a prerequisite.

19 TAC 74.11(i)–(j)

Dual Credit Courses

Courses offered for dual credit at or in conjunction with an institution of higher education (IHE) that provide advanced academic instruction beyond, or in greater depth than, the essential knowledge and skills for the equivalent high school course required for graduation may satisfy graduation requirements, including requirements for required courses, advanced courses, and courses for elective credit as well as requirements for endorsements. *19 TAC 74.11(h)*

Core Curriculum College Courses

A district shall permit a student to comply with the curriculum requirements under the foundation high school program by successfully completing appropriate courses in the core curriculum of an IHE. A student who has completed the core curriculum of an IHE in accordance with Education Code 61.822, as certified by the IHE in accordance with Education Code 4.28:

1. Is considered to have earned an endorsement by successfully completing the appropriate courses for that endorsement;

2. Is considered to have earned a distinguished level of achievement under the foundation high school program; and
3. Is entitled to receive a high school diploma.

19 TAC 74.11(n)

*Languages Other
Than English*

Students may earn credit for languages other than English in accordance with 19 Administrative Code 74.12(b)(5).

A student who successfully completes a dual language immersion program may satisfy one credit of the two credits required in a language other than English in accordance with 19 Administrative Code 74.12(b)(5)(F).

19 TAC 74.12(b)(5)

A student who successfully completes a course in American Sign Language while in elementary school may satisfy one credit of the two credits required in a language other than English. *19 TAC 74.12(b)(5)(G)*

*Physical
Education
Substitutions*

*Other Physical
Activity*

In accordance with local district policy, the required physical education credit may be earned through completion of any TEKS-based course that is not being used to satisfy another specific graduation requirement. [See Restrictions, below]

In accordance with local district policy, credit for any physical education course may be earned through participation in the following activities:

1. Athletics;
2. JROTC; and
3. Appropriate private or commercially sponsored physical activity programs conducted on or off campus. A district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:
 - a. Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

- b. Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

In accordance with local district policy, up to one credit for any one of the physical education courses listed in 19 Administrative Code Chapter 74 [see EHAC] may be earned through participation in any of the following activities:

1. Drill team;
2. Marching band; and
3. Cheerleading.

Restrictions All substitution activities permitted by local district policy must include at least 100 minutes of moderate to vigorous physical activity per five-day school week.

No more than four substitution credits may be earned through any combination of substitutions listed above.

Student with Disability or Illness A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit in English language arts, mathematics, science, social studies or a course that is offered for credit as provided by Education Code 28.002(g-1) for the required physical education credit. A credit allowed to be substituted may not also be used by the student to satisfy a graduation requirement other than completion of the physical education credit. The determination regarding a student's ability to participate in physical activity must be made by:

1. The student's ARD committee if the student receives special education services under Education Code Chapter 29, Subchapter A;
2. The committee established for the student under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794) if the student does not receive special education services under Education Code Chapter 29, Subchapter A but is covered by the Rehabilitation Act of 1973; or
3. A committee, established by the district, of persons with appropriate knowledge regarding the student if each of the committees described above is inapplicable. This committee must

follow the same procedures required of an ARD or a Section 504 committee.

Education Code 28.025(b-10)–(b-11); 19 TAC 74.12(b)(6)

*Community-
Based Fine Arts
Programs*

In accordance with local district policy, the required fine arts credit may be earned through participation in a community-based fine arts program not provided by the school district in which the student is enrolled.

In accordance with local policy, credit may be earned through participation in the community-based fine arts program only if the program meets each of the following requirements:

1. The district must apply to the commissioner for approval of the community-based fine arts program;
2. The board must certify that the program provides instruction in the essential knowledge and skills for fine arts as defined by 19 Administrative Code, Chapter 117, Subchapter C;
3. The district must document student completion of the approved activity;
4. The program must be organized and monitored by appropriately trained instructors;
5. The fine arts program may be provided on or off a school campus and outside the regular school day; and
6. Students may not be dismissed from any part of the regular school day to participate in the community-based fine arts program.

The district shall require that instructors of the community-based fine arts program provide the district, at its request, the information necessary to obtain the criminal history record information required for school personnel in accordance with 19 Administrative Code, Chapter 153, Subchapter DD, if the community-based program is offered on campus.

Education Code 28.025(b-9); 19 TAC 74.12(b)(7)(B), .1030

*Performance
Acknowledgments*

In accordance with the requirements of 19 Administrative Code 74.14, a student may earn a performance acknowledgment on the student's transcript for:

1. Outstanding performance:
 - a. In a dual credit course;
 - b. In bilingualism and biliteracy;

- c. On a College Board advanced placement test or international baccalaureate examination;
 - d. On an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument used to measure a student's progress toward readiness for college and the workplace; or
 - e. On an established, valid, reliable, and nationally norm-referenced assessment instrument used by colleges and universities as part of their undergraduate admissions process; or
2. Earning a state-recognized or nationally or internationally recognized business or industry certification or license.

Education Code 28.025(c-5); 19 TAC 74.14

Students Who
Entered Grade 9
Before the 2014–15
School Year

*Minimum High
School Program*

All credit for graduation must be earned no later than grade 12. 19 TAC 74.61(b), .71(b)

A student entering grade 9 prior to the 2014–15 school year who does not choose to complete the curriculum requirements for high school graduation under the foundation high school program must enroll in the courses necessary to complete the curriculum requirements for the Recommended High School Program or the Advanced/Distinguished Achievement High School Program, unless the student, the student's parent or other person standing in parental relation to the student, and a school counselor or school administrator agree in writing signed by each party that the student should be permitted to take courses under the Minimum High School Program, and the student:

1. Is at least 16 years of age;
2. Has completed two credits required for graduation in each subject of the foundation curriculum under Education Code 28.002(a)(1); or
3. Has failed to be promoted to the tenth grade one or more times as determined by the school district.

Students with
Disabilities

If an ARD committee makes decisions that place a student with a disability on a modified curriculum in a subject area, the student will be automatically placed in the Minimum High School Program.

Applicability

A student who was permitted to take courses under the Minimum High School Program prior to the 2009–10 school year may remain in the Minimum High School Program.

19 TAC 74.61(c), (d), .71(c), (d)

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| Requirements | <p>A student must earn at least 22 credits to complete the Minimum High School Program.</p> <p>A student who entered grade 9 in the 2012–13 or 2013–14 school year must demonstrate proficiency in the program requirements listed at 19 Administrative Code 74.72.</p> <p>A student who enters grade 9 before the 2012–13 school year must meet the applicable program requirements in 19 Administrative Code Chapter 74, Subchapters D–F.</p> <p><i>Education Code 28.025; 19 TAC 74.62, .72</i></p> |
| <i>Recommended High School Program</i> | <p>A student who entered grade 9 in the 2012–13 or 2013–14 school year must earn at least 26 credits to complete the Recommended High School Program. A student must demonstrate proficiency in the program requirements listed at 19 Administrative Code 74.73. <i>Education Code 28.025; 19 TAC 74.63, .73</i></p> |
| <i>Advanced / Distinguished Achievement High School Program</i> | <p>A student who entered grade 9 in the 2012–13 or 2013–14 school year must earn at least 26 credits to complete the Advanced/Distinguished Achievement High School Program. A student must demonstrate proficiency in the program requirements listed at 19 Administrative Code 74.74. <i>Education Code 28.025; 19 TAC 74.64, .74</i></p> |
| <i>Substitutions</i> | <p>No substitutions are allowed for high school graduation requirements in the Recommended and Advanced/Distinguished Achievement High School Programs, except as provided by State Board rule. <i>19 TAC 74.63(d), .64(e), .73(d), .74(e)</i></p> |
| <i>AP or IB Courses</i> | <p>College Board advanced placement and international baccalaureate courses may be substituted for required courses in appropriate areas. These courses may be used as electives in all three high school graduation programs. <i>19 TAC 74.61(k), .71(i)</i></p> |
| <i>Reading</i> | <p>A district may offer a maximum of 3 credits of reading for state graduation elective credit for identified students if the district:</p> <ol style="list-style-type: none"> 1. Adopts policies to identify students in need of additional reading instruction; 2. Has procedures that include assessment of individual student needs and ongoing evaluation of each student’s progress; and 3. Monitors instructional activities to ensure that student needs are addressed. <p>Reading credits may be selected from Reading I, II, or III.</p> <p><i>19 TAC 74.61(h), .71(f)</i></p> |

College Courses A student may comply with the curriculum requirements under the Minimum, Recommended, or Advanced/Distinguished Achievement High School Program for each subject of the foundation curriculum and for languages other than English by successfully completing appropriate courses in the core curriculum of an IHE. 19 TAC 74.61(l), .71(j)

Physical Education Substitutions In accordance with local district policy, credit for any physical education course may be earned through participation in the following activities:

Other Physical Activity

1. Athletics;
2. JROTC; and
3. Appropriate private or commercially sponsored physical activity programs conducted on or off campus. A district must apply to the commissioner for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:
 - a. Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.
 - b. Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

In accordance with local district policy, up to one credit for any one of the physical education courses listed in 19 Administrative Code Chapter 74 [see EHAC] may be earned through participation in any of the following activities:

1. Drill team;
2. Marching band; and
3. Cheerleading.

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| Restrictions | <p>All substitution activities must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.</p> <p>No more than four substitution credits may be earned through any combination of substitutions listed above.</p> |
| <i>Student with Disability or Illness</i> | <p>A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit in English language arts, mathematics, science, or social studies for the required physical education credit. A credit allowed to be substituted may not also be used by the student to satisfy a graduation requirement other than completion of the physical education credit. The determination regarding a student's ability to participate in physical activity must be made by:</p> <ol style="list-style-type: none"> 1. The student's ARD committee if the student receives special education services under Education Code Chapter 29, Subchapter A; 2. The committee established for the student under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794) if the student does not receive special education services under Education Code Chapter 29, Subchapter A but is covered by the Rehabilitation Act of 1973; or 3. A committee, established by the district, of persons with appropriate knowledge regarding the student if each of the committees described above is inapplicable. This committee must follow the same procedures required of an ARD or a Section 504 committee. |
| <i>Student with Physical Limitations</i> | <p>If a student entering grade 9 during the 2007–08 school year or thereafter is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Recommended or Advanced/Distinguished High School Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.</p> <p><i>Education Code 28.025(b-10)–(b-11); 19 TAC 74.62(b)(7), .63(b)(7), .64(b)(7), .72(b)(6), .73(b)(6), .74(b)(6)</i></p> |
| Transfers from Out-of-State or Nonpublic Schools | <p>Out-of-state or out-of-country transfer students (including foreign exchange students) and transfer students from Texas nonpublic schools are eligible to receive Texas diplomas but shall complete all applicable high school graduation requirements. Any course credits required for graduation that are not completed before enroll-</p> |

ment may be satisfied through credit by examination, correspondence courses, distance learning, or completing the course, according to the provisions of 19 Administrative Code 74.26. *19 TAC 74.11(f)* [See EHDB, EHDC, EHDE, and EI]

Graduation of Students Receiving Special Education Services

Modified Curriculum and Content

Modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in 19 Administrative Code Chapters 110-~~118~~117, 126-128, and 130. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content. *19 TAC 89.1070(k)*

Employability and Self-Help Skills

Employability and self-help skills are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment. *19 TAC 89.1070(ji)*

Summary of Academic Achievement and Evaluation

All students graduating must be provided with a summary of academic achievement and functional performance as described in 34 C.F.R. 300.305(e)(3). This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 C.F.R. 300.305(e)(1) (evaluation to determine that the child is no longer a child with a disability), must be included as part of the summary for a student graduating under 19 Administrative Code 89.1070 (b)(~~23~~)(A), (B), or (C) or (g)(4)(A), (B), or (C). Students who participate in graduation ceremonies but who are not graduating under subsections (b)(~~23~~)(A), (B), or (C) or (g)(4)(A), (B), or (C) and who will remain in school to complete their education do not have to be evaluated. *19 TAC 89.1070(q)-(h)-(i)*

Students Entering Grade 9 in or After the 2014-15 School Year

A student entering grade 9 in the 2014-15 school year and thereafter who receives special education services may graduate and be awarded a regular high school diploma if the student meets one of the following conditions:

1. The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110-~~118~~117, 126-128, and 130 and satisfactorily completed credit requirements for graduation under the foundation high school program applicable to students in general education as well as satisfactory performance ~~on the required state assessments, unless the student's ARD committee has determined that satisfactory performance on the required state assessments is not necessary for graduation as established in Education Code Chapter 39, on the required EOC assessment instruments.~~

2. The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110–~~118~~117, 126–128, and 130 and satisfactorily completed credit requirements for graduation under the foundation high school program specified in 19 Administrative Code 74.12 applicable to students in general education but the student's ARD committee has determined that satisfactory performance on the required EOC assessment instruments is not necessary for graduation.

~~2-3.~~ The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110–117, 126–128, and 130 and satisfactorily completed credit requirements for graduation under the foundation high school program through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education, as well as satisfactory performance as established in Education Code Chapter 39, on the required ~~state assessments~~EOC assessment instruments, unless the student's ARD committee has determined that satisfactory performance on the required ~~state assessments~~EOC assessment instruments is not necessary for graduation. The student must also successfully complete the student's IEP and meet one of the following conditions:

- a. Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.
- b. Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.
- c. The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.
- d. The student no longer meets age eligibility requirements.

When a student receives a diploma under item 2 or 3(a), (b), or (c), above, the ARD committee must determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

19 TAC 89.1070(b), (k)

Endorsements

A student who is enrolled in a special education program may earn an endorsement on the student's transcript by:

1. Successfully completing, with or without modification of the curriculum:
 - a. The curriculum requirements identified by the SBOE for the foundation high school program; and
 - b. The additional endorsement curriculum requirements prescribed by the SBOE; and
2. Successfully completing all curriculum requirements for that endorsement adopted by the SBOE:
 - a. Without modification of the curriculum; or
 - b. With modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's ARD committee.

The ARD committee of a student in a special education program shall determine whether the student is required to achieve satisfactory performance on an end-of-course assessment instrument to earn an endorsement on the student's transcript.

Education Code 28.025(c-7)–(c-8), [19 TAC 89.1070\(c\)](#)

*Students
Entering Grade 9
Before the 2014–
15 School Year*

A student receiving special education services who entered grade 9 before the 2014–15 school year may graduate and be awarded a high school diploma under the foundation high school program ~~if the student's ARD committee determines that the student should take courses under that program and the student satisfies the requirements of that program. A student transitioning to the Foundation High School Program may earn an endorsement as set out above [see Endorsements, above].~~ [in accordance with 19 Administrative Code 89.1070.](#)

~~A student receiving special education services in 11th or 12th grade who has taken each of the required state assessments but failed to achieve satisfactory performance on no more than two of the assessments may graduate if the student has satisfied all other applicable graduation requirements. [See Special Education, above, and EKB]~~

~~*19 TAC 89.1070(f)*~~

~~A student receiving special education services who entered grade 9 before the 2014–15 school year may graduate and be awarded a~~

~~regular high school diploma if the student meets one of the following conditions:~~

- ~~3.—The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110–118, 126–128, and 130 and satisfactorily completed credit requirements for graduation under the Recommended or Advanced/Distinguished Achievement Programs, including satisfactory performance on the required state assessments.~~
- ~~4.—The student is in grade 11 or 12 and has taken each of the state assessments required by 19 Administrative Code Chapter 101, Subchapter CC (Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD (Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments and has met all other applicable graduation requirements in item 1 above.~~
- ~~5.—The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110–118, 126–128, and 130 and satisfactorily completed credit requirements under the Minimum High School Program, including participation in state assessments. The student's ARD committee shall determine whether satisfactory performance on the required state assessments is necessary for graduation.~~
- ~~6.—The student has demonstrated mastery of the required state standards (or district standards if greater) in 19 Administrative Code Chapters 110–118, 126–128, and 130 through courses, one or more of which contain modified content that is aligned to the standards required under the Minimum High School Program as well as the satisfactorily completed credit requirements under the Minimum High School Program, including participation in required state assessments. The student's ARD committee shall determine whether satisfactory performance on the required state assessments is necessary for graduation. The student must also successfully complete the student's IEP and meet one of the following conditions:
 - ~~a.—Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;~~~~

- ~~b.— Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district;~~
- ~~c.— The student has access to services that are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program; or~~
- ~~d.— The student no longer meets age eligibility requirements.~~

~~When a student receives a diploma under item 3(a), (b), or (c), above, the ARD committee must determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.~~

~~19 TAC 89.1070(g), (k)~~

**Graduation of
Military Dependents**

Course Waiver

District officials shall waive specific courses required for graduation if similar coursework has been satisfactorily completed by a military student in another district or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the district shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

Transfers During
Senior Year

Should a military student transferring at the beginning or during the student's senior year be ineligible to graduate from the district after all alternatives have been considered, the sending and receiving districts shall ensure the receipt of a diploma from the sending district, if the student meets the graduation requirements of the sending district. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student.

Substitute Passing
Standard

The commissioner shall adopt a passing standard on one or more national norm-referenced achievement tests for purposes of permitting a qualified military dependent to meet that standard as a substitute for completing a specific course otherwise required for graduation. The passing standard is available only for a student who enrolls in a public school in this state for the first time after completing the ninth grade or who reenrolls in a public school in this state at or above the tenth grade level after an absence of at least two years from the public schools of this state. Each passing standard in effect when a student first enrolls in a Texas public high school remains applicable to the student for the duration of the student's high school enrollment, regardless of any subsequent revision of the standard.

Education Code 162.002 art. VII, A, C [See FDD]

**Graduation of
Student Who Is
Homeless or in
Conservatorship of
DFPS**

If an 11th or 12th grade student who is homeless or in the conservatorship of the Department of Family and Protective Services transfers to a different school district and the student is ineligible to graduate from the district to which the student transfers, the district from which the student transferred shall award a diploma at the student's request, if the student meets the graduation requirements of the district from which the student transferred. *Education Code 28.025(i)*

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State Assessment of Academic Skills

Every student receiving instruction in the essential knowledge and skills shall take the appropriate criterion-referenced assessments, as required by Education Code Chapter 39, Subchapter B [see Testing in Grades 3–8, below]. *Education Code 39.023(a), (c), (f); 19 TAC 101.5*

A student may not receive a high school diploma until the student has performed satisfactorily on end-of-course (EOC) assessment instruments [see End-of-Course Assessments, below]. *Education Code 39.025(a); 19 TAC 101.4001*

Limited English Proficient Students

In grades 3–12, a limited English proficient (LEP) student, as defined by Education Code Chapter 29, Subchapter B, shall participate in the state assessment in accordance with commissioner rules at 19 Administrative Code Chapter 101, Subchapter AA. *Education Code 39.023(l), (m)* [See EKBA]

Special Education

The Texas Education Agency (TEA) shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to each student in a special education program for whom a state assessment instrument adopted under Education Code 39.023(a), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student’s admission, review, and dismissal (ARD) committee, including assessment instruments approved by the commissioner of education that measure growth. The assessment instruments developed or adopted, including the assessment instruments approved by the commissioner, must, to the extent allowed under federal law, provide a district with options for the assessment of students.

TEA may not adopt a performance standard that indicates that a student’s performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student’s developmental level as determined by the student’s ARD committee.

The student’s ARD committee shall determine whether any allowable modification is necessary in administering to the student a required EOC assessment instrument under Education Code 39.023(c), and whether the student is required to achieve satisfactory performance on an EOC assessment instrument to receive a high school diploma.

Education Code 39.023(b)–(c), .025(a-4)

Military Dependents

If the student is a military dependent, the district shall incorporate procedures to accept:

1. Exit or EOC exams required for graduation from the sending state;
2. National norm-referenced achievement tests; or
3. Alternative testing, in lieu of testing requirements for graduation in the receiving state.

In the event the above alternatives cannot be accommodated by the receiving state for a military dependent transferring in his or her senior year, then Education Code 162.002 article VII, section C, shall apply.

*Substitute
Passing Standard*

The commissioner shall adopt a passing standard on one or more national norm-referenced achievement tests for purposes of permitting a qualified military dependent to meet that standard as a substitute for achieving a score on an assessment instrument otherwise required for graduation. The passing standard is available only for a student who enrolls in a public school in this state for the first time after completing the ninth grade or who reenrolls in a public school in this state at or above the grade 10 level after an absence of at least two years from the public schools of this state. Each passing standard in effect when a student first enrolls in a Texas public high school remains applicable to the student for the duration of the student's high school enrollment, regardless of any subsequent revision of the standard.

Education Code 162.002 art. VII [See EIF]

Administration

A district shall follow the test administration procedures established by TEA in the applicable test administration materials. A superintendent shall be responsible for administering tests. *19 TAC 101.25, .27*

Schedule

The commissioner shall specify the schedule for testing that is in compliance with Education Code 39.023(c-3) and supports reliable and valid assessments. Participation in University Interscholastic League (UIL) area, regional, or state competitions is prohibited on any days on which testing is scheduled between Monday and Thursday of the school week in which the primary administration of assessment instruments occurs.

The commissioner may provide alternate dates for the administration of tests required for a high school diploma to students who are migratory children and who are out of the state.

19 TAC 101.25

*Alternate Test
Dates*

The commissioner shall consider requests from districts or campuses for alternate test dates on a case-by-case basis. Alternate

test dates will only be allowed if the campus or district is closed on the day on which testing is scheduled or if there is an exceptional circumstance, defined below, that may affect a district's or campus's ability to administer an assessment or the students' performance on the assessment.

"Exceptional circumstances" include:

1. Inclement weather or natural disasters that would cause a district or campus to be closed or that would cause a small percentage of students to be in attendance on the day testing is scheduled;
2. Health epidemics that result in a large number of students being absent on the day of testing;
3. Death of a student or school official that may impact student performance; and
4. Sudden emergencies that occur on the day of testing or shortly before testing that may inhibit students from completing the assessments, such as a fire on campus, a bomb threat, an extended power outage, or a water main break.

If an alternate test date for primary test administration is approved, the commissioner may prohibit a district or campus from participating in UIL competition on the new test date if that is determined to be in the best interest of the district, campus, and students.

19 TAC 101.5003

Notice to Parents and Students

A superintendent shall be responsible for providing written notice to each student and the student's parent or guardian of:

1. The testing requirements for grade advancement [see EIE] and the dates, times, and locations of testing. Notice of testing requirements shall be provided no later than the beginning of the student's kindergarten year, for students attending kindergarten in the district, and no later than the beginning of the student's first-grade year for all other students. The superintendent shall also provide such notice for students in grades 1–8 who are new to the district.
2. The testing requirements for graduation and the dates, times, and locations of testing. Notice of testing requirements shall be provided no later than the beginning of the student's seventh-grade year. The superintendent shall also provide such notice for students in grades 7–12 who are new to the district. Notice of the dates, times, and locations of testing shall be

provided to each student who will take the tests and to out-of-school individuals.

19 TAC 101.3012

**Testing in
Grades 3–8**

Except as provided below, all students, other than students who are assessed under Education Code 39.023(b) (alternative assessment instrument) or 39.023(l) (LEP students) or exempted under Education Code 39.027, shall be assessed in:

1. Mathematics, annually in grades 3–8;
2. Reading, annually in grades 3–8;
- ~~3. Writing, including spelling and grammar, in grades 4 and 7;~~
- ~~4.3.~~ Social studies in grade 8;
- ~~5.4.~~ Science in grades 5 and 8; and
- ~~6.5.~~ Any other subject and grade required by federal law.

Education Code 39.023(a)

Exception

For purposes of federal accountability, a student shall not be administered a grade-level assessment if the student:

1. Is enrolled in a course or subject intended for students above the student's enrolled grade level and will be administered a grade-level assessment instrument developed under the list above that aligns with the curriculum for that course or subject within the same content area; or
2. Is enrolled in a course for high school credit in a subject intended for students above the student's enrolled grade level and will be administered an EOC assessment instrument that aligns with the curriculum for that course or subject within the same content area.

For purposes of federal accountability, a grade 3–8 student who is accelerated in mathematics, reading/language arts, or science and on schedule to complete the high school end-of-course assessments in that same content area prior to high school shall be assessed at least once in high school with the ACT or the SAT.

A student is only eligible to take an assessment instrument intended for use above the student's enrolled grade if the student is on schedule to complete instruction in the entire curriculum for that subject during the semester the assessment is administered.

A student in grade 5 or 8 described above may not be denied promotion on the basis of failure to perform satisfactorily on an assessment instrument above the student's grade level.

Education Code 28.0211(o)–(p), 39.023(a-2); 19 TAC 101.3011(a)(1)–(4)

Kindergarten
Assessment

An assessment instrument under Education Code 39.023 may not be administered to a kindergarten student except for the purpose of determining whether the student is entitled to the benefit of the Foundation School Program [see FD]. *Education Code 39.023(a-16)*

Prekindergarten
Assessment

Performance on an assessment instrument administered to students in prekindergarten may not be considered for any purpose related to Education Code Chapters 39 and 39A. *Education Code 39.0237*

Accommodations

Testing accommodations are permitted for any student unless they would make a particular test invalid. Decisions regarding testing accommodations shall take into consideration the needs of the student and the accommodations the student routinely receives in classroom instruction. Permissible testing accommodations shall be described in the appropriate test administration materials.

The committee established by a board to determine the placement of students with dyslexia or related disorders shall determine whether any allowable modification is necessary in administering an assessment to such a student.

A student's ARD committee shall determine the allowable accommodations and shall document them in the student's individualized education program (IEP). [See Special Education, above]

19 TAC 101.3013; Education Code 39.023(a)–(c), (n); 34 C.F.R. 300.320(a)(6)

**End-of-Course
Assessments**

Beginning with students first enrolled in grade 9 in the 2011–12 school year, a student enrolled in a course for which an EOC assessment exists as required by Education 39.023(c) shall take the appropriate assessment. *19 TAC 101.3021(a)*

TEA shall adopt EOC assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history. The Algebra I EOC assessment instrument must be administered with the aid of technology, but may include one or more parts that prohibit the use of technology. The English I and English II EOC assessment instruments must each assess essential knowledge and skills in both reading and writing and must pro-

vide a single score. A district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this provision.

If a student is in a special education program, the student's ARD committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this provision.

Education Code 39.023(c)

Students Enrolled
Below High School
Level

Beginning in the 2011–12 school year, a student in grade 8 or lower who takes a high school course for credit is required to take the applicable EOC assessment. The EOC assessment result shall be applied toward the student's assessment graduation requirements, as specified in 19 Administrative Code 101.3022. *19 TAC 101.3021(d)*

Assessment
Requirements for
Graduation

A student must meet satisfactory performance on an EOC assessment listed in Education Code 39.023(c) only for a course in which the student is enrolled and for which an EOC assessment instrument is administered in order to be eligible to receive a Texas diploma.

Exceptions

English I or
English II

A student who was administered separate reading and writing EOC assessments under Education Code 39.023(c), for the English I or English II course has met that course's assessment graduation requirement if the student has:

1. Achieved satisfactory performance on either the reading or writing EOC assessment for that course;
2. Met at least the minimum score on the other EOC assessment for that course; and
3. Achieved an overall scale score of 3750 or greater when the scale scores for reading and writing are combined for that course.

Exceptions related to English I also apply to English language learners who meet the criteria in 19 Administrative Code 101.1007. [See EKBA]

Credits Earned
Prior to
Enrollment

If a student earned high school credit for a course with an EOC assessment prior to enrollment in a Texas public school district and the credit has been accepted by a Texas public school district, or a student completed a course for Texas high school credit in a

course with an EOC assessment prior to the 2011–12 spring administration, the student is not required to take the corresponding EOC assessment.

19 TAC 101.3021(e), .3022

Substitute
Assessments

The commissioner adopts certain assessments as substitute assessments that a student may use in place of a corresponding EOC assessment to meet the student’s assessment graduation requirements. A satisfactory score on an approved assessment may be used in place of only one specific EOC assessment, except as provided by 19 Administrative Code 101.4002(d)(1) (student who qualifies for use of the Texas Success Initiative (TSI) as a substitute assessment and is enrolled in certain college preparatory courses).

A student at any grade level is eligible to use a substitute assessment as provided in the commissioner’s chart at 19 Administrative Code 101.4002(b) if the student:

1. Was administered an approved substitute assessment for an equivalent course in which the student was enrolled;
2. Received a satisfactory score on the substitute assessment as determined by the commissioner and provided in the chart at 19 Administrative Code 101.4002(b); and
3. Using a TSI assessment also meets the additional criteria of 19 Administrative Code 101.4002(d).

*TSI Additional
Criteria*

A student must meet the criteria established in 19 Administrative Code 101.4002(d) in order to qualify to use TSI as a substitute assessment.

Accountability
Testing

A student electing to substitute an assessment for graduation purposes must still take the corresponding EOC assessment required under Education Code 39.023(c) at least once for accountability purposes. If a student sits for an EOC assessment, a district may not void or invalidate the test in lieu of a substitute assessment.

A student who fails to perform satisfactorily on a PSAT, PLAN, or Aspire test (or any versions of these tests) as indicated in the chart in 19 Administrative Code 101.4003(b) must take the appropriate EOC assessment required under Education Code 39.023(c). However, a student who does not receive a passing score on the EOC assessment and retakes a PSAT, PLAN, or Aspire test (or any versions of these tests) is eligible to meet the requirements specified in 19 Administrative Code 101.4002(c).

19 TAC 101.4002

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| <i>Verification of Results</i> | <p>An eligible student is responsible for providing a district an official copy of the student's scores from the substitute assessment.</p> <p>Upon receipt of official results of an approved substitute assessment, a district must:</p> <ol style="list-style-type: none"> 1. Verify the student's score on the substitute assessment; and 2. Determine whether the student met the performance standard required to qualify for a public high school diploma in Texas as established by the commissioner. <p><i>19 TAC 101.4005</i></p> |
| Satisfactory Performance | <p>A student is required to achieve a scale score that indicates satisfactory performance, as determined by the commissioner on each EOC assessment instrument administered to the student. <i>Education Code 39.025(a)</i></p> |
| Individual Graduation Committee | <p>A student in grade 11 or 12 who has failed to comply with the EOC assessment instrument performance requirements under Education Code 39.025 for not more than two courses may qualify to graduate on the basis of a review by an individual graduation committee (IGC). [See EIF] <i>Education Code 28.0258, 39.025(a-5)</i></p> |
| Special Education | <p>A student receiving special education services is not subject to the IGC requirements in Education Code 28.0258. As provided in 19 Administrative Code 89.1070 (Graduation Requirements) and 19 Administrative Code 101.3023 (Participation and Graduation Assessment Requirements for Students Receiving Special Education Services), a student's ARD committee determines whether a student is required to achieve satisfactory performance on an EOC assessment to graduate.</p> <p>A student dismissed from a special education program who achieved satisfactory performance on an alternate EOC assessment while enrolled in a special education program is not required to take and achieve satisfactory performance on the general EOC assessment to graduate. A student who took an EOC assessment while enrolled in a special education program is not required to re-take and achieve satisfactory performance on the EOC assessment if the student's ARD committee determined that the student was not required to achieve satisfactory performance on the EOC assessment to graduate. A student dismissed from a special education program must achieve satisfactory performance on any remaining EOC assessments that the student is required to take. If the student fails to achieve satisfactory performance on no more than two of the remaining EOC assessments, the student is eligible for IGC review under Education Code 28.0258 and is subject to the</p> |

IGC provisions above. [See Individual Graduation Committee, above]

19 TAC 101.3022(f)

A student receiving special education services who successfully completes the requirements of his or her IEP, including performance on a state assessment required for graduation, shall receive a Texas high school diploma. A student's ARD committee shall determine if the student will be required to meet satisfactory performance on an assessment for purposes of graduation.

Beginning with the 2011–12 school year, all grades 9–12 students with significant cognitive disabilities who are assessed with an alternate assessment as specified in the student's IEP will be assessed using alternate versions of EOC assessments as listed in 19 Administrative Code 101.3011(b)(2).

19 TAC 101.3023(a), (b)

Credit by
Examination

An EOC assessment administered under Education Code 39.023(c) cannot be used for purposes of credit by examination under 19 Administrative Code 74.24. [See EHDB, EHDC] *19 TAC 101.3021(c)*

Additional State
Assessments

TEA may adopt EOC assessment instruments for courses not listed in statute, as described above. A student's performance on these EOC assessment instruments is not subject to the performance requirements established for the statutory assessments. *Education Code 39.023(c-2)*

Retakes

Each time an EOC assessment instrument is administered, a student who failed to achieve a score requirement may retake the assessment instrument. [See Satisfactory Performance, above]

A student is not required to retake a course as a condition of retaking an EOC assessment instrument.

If a student failed a course but achieved satisfactory performance on the applicable EOC assessment, that student is not required to retake the assessment if the student is required to retake the course.

Education Code 39.025(b); 19 TAC 101.3021(f), .3022(d)

Reporting Results
To the Public

Overall student performance data, aggregated by ethnicity, sex, grade level, subject area, campus, and district, shall be made available to the public, with appropriate interpretations, at regularly scheduled meetings of a board, after receipt from TEA. The information shall not contain the names of individual students or teachers. *Education Code 39.030(b)*

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| To the Board | A superintendent shall accurately report all test results with appropriate interpretations to a board according to the schedule in the applicable test administration materials. |
| To Parents, Students, and Teachers | <p>A district shall notify each of its students, his or her parent or guardian, and his or her teacher for that subject of test results, observing confidentiality requirements stated at Confidentiality of Results, below. All test results shall be included in each student's academic achievement record and shall be furnished for each student transferring to another district or school. Upon receipt of the assessment results from the test contractor, a district shall disclose a student's assessment results to a student's teacher in the same subject area as the assessment for that school year. [See BQ series, FD, and FL]</p> <p><i>19 TAC 101.3014</i></p> <p>TEA shall adopt a series of questions to be included in an EOC assessment instrument administered under Education Code 39.023(c) to be used for purposes of identifying students who are likely to succeed in an advanced high school course. A district shall notify a student who performs at a high level on the questions and the student's parent or guardian of the student's performance and potential to succeed in an advanced high school course. A district may not require a student to perform at a particular level on the questions to be eligible to enroll in an advanced high school course. <i>Education Code 39.0233(b)</i></p> |
| Parents Right-to-Know Under ESEA | As a condition of receiving assistance under Title I, Part A of the Elementary and Secondary Education Act (ESEA) (20 U.S.C. 6301 et seq.), a district shall provide to each individual parent of a child who is a student in such school, with respect to such student information on the level of achievement and academic growth of the student, if applicable and available, on each of the state academic assessments required under Part A. <i>20 U.S.C. 6312(e)(1)(B)(i)</i> |
| Parental Access | A parent is entitled to access to a copy of each state assessment instrument administered to the parent's child. This right of access does not apply, however, to those instruments or particular questions that are being field-tested by TEA. <i>Education Code 26.005, .006(a)(2)</i> |
| Out-of-State Transfers | A district shall accurately report to TEA whether that student transferred into the district from out of state during the current school year. |

Procedures for the reporting of out-of-state-transfer students to TEA shall be established in the applicable test administration materials. A district shall follow procedures specified in those test administration materials.

The assessment results of the out-of-state transfer students shall be reported separately to districts from the results of the district's other students in addition to the current reporting of assessment results for all students and other student subsets.

19 TAC 101.3014

**Accelerated
Instruction**

Each time a student fails to perform satisfactorily on an assessment instrument administered under Education Code 39.023(a) in the third, fourth, fifth, sixth, seventh, or eighth grade, the district in which the student attends school shall provide to the student accelerated instruction in the applicable subject area. Accelerated instruction may require participation of the student before or after normal school hours and may include participation at times of the year outside normal school operations. *Education Code 28.0211(a-1)*

A district shall provide each student who fails to perform satisfactorily on an EOC assessment instrument with accelerated instruction in the subject assessed by the assessment instrument. *Education Code 39.025(b-1)* [See EHBC]

College Readiness

Each district shall partner with at least one institution of higher education to develop and provide courses in college preparatory mathematics and English language arts. The courses must be designed:

1. For students at the grade 12 level whose performance on:
 - a. An EOC assessment instrument required under Education Code 39.023(c) does not meet college readiness standards; or
 - b. Coursework, a college entrance examination, or an assessment instrument designated under Education Code 51.334(a) indicates that the student is not ready to perform entry-level college coursework; and
2. To prepare students for success in entry-level college courses.

A course must be provided on the campus of the high school offering the course or through distance learning or as an online course provided through the institution of higher education with which the district partners.

Faculty Appropriate faculty of each high school offering courses and appropriate faculty of each institution of higher education with which the district partners shall meet regularly as necessary to ensure that each course is aligned with college readiness expectations.

Notice Each district shall provide a notice to each eligible student and the student's parent or guardian regarding the benefits of enrolling in a course.

Credit Earned A student who successfully completes an English language arts course may use the credit earned toward satisfying the advanced English language arts curriculum requirement for the foundation high school program under Education Code 28.025(b-1)(1). A student who successfully completes a mathematics course may use the credit earned in the course toward satisfying an advanced mathematics curriculum requirement under Education Code 28.025 after completion of the mathematics curriculum requirements for the foundation high school program under Education Code 28.025(b-1)(2).

Dual Credit A course may be offered for dual credit at the discretion of the institution of higher education with which a district partners.

Instructional Materials Each district, in consultation with the institution of higher education with which the district partners, shall develop or purchase instructional materials for a course consistent with Education Code Chapter 31. The instructional materials must include technology resources that enhance the effectiveness of the course and draw on established best practices.

Education Code 28.014

Security and Confidentiality

All assessment instruments included in the student assessment program are considered secure, and the contents of these tests, including student information used or obtained in their administration, are confidential.

Districts and campuses and the superintendent and campus principals in each district and campus shall:

1. Implement and ensure compliance with state test administration procedures and training activities;
2. Notify TEA as soon as the district becomes aware of any alleged or suspected violation of the security or confidential integrity of a test [see Violations, below];

3. Report all confirmed testing violations to TEA within ten working days of the district becoming aware of the violation in accordance with the reporting process stipulated in the test administration materials;
4. Ensure that the only individuals with access to secure test materials are district employees who have:
 - a. Met the requirements to participate in the student assessment program;
 - b. Received annual training in test security and test administration procedures; and
 - c. Signed an oath affirming they understand their obligation to maintain and preserve the security and confidentiality of all state assessments and student information, acknowledge their responsibility to report any suspected testing violation, and are aware of the range of penalties that may result from a violation of test security and confidentiality or a departure from test administration procedures; and
5. Ensure the security of the test materials as required by 19 Administrative Code 101.3031(a)(2)(E).

19 TAC 101.3031(a)(1)–(a)(2)

Violations

Violations of the security and confidential integrity of a test include:

1. Directly or indirectly assisting students with responses to test questions;
2. Tampering with student responses;
3. Falsifying holistic ratings or student responses;
4. Viewing secure test content before, during, or after an administration unless specifically authorized by TEA or by the procedures outlined in the test administration materials;
5. Discussing or disclosing secure test content or student responses;
6. Scoring students' tests, either formally or informally;
7. Duplicating, recording, or electronically capturing confidential test content unless specifically authorized by TEA or by the procedures outlined in the test administration materials;
8. Responding to secure test questions;

9. Fraudulently exempting or preventing a student from participating in the administration of a required state assessment;
10. Receiving or providing unallowable assistance during calibration activities (e.g., taking notes, providing answer sheets, or sharing answers);
11. Encouraging or assisting an individual to engage in the conduct described above or in any other serious violation of security and confidentiality;
12. Failing to report to an appropriate authority that an individual has engaged or is suspected of engaging in the above conduct or in any other serious violation of security and confidentiality under this provision;
13. Failing to implement sufficient procedures to prevent student cheating; and
14. Failing to implement sufficient procedures to prevent alteration of test documents by anyone other than the student.

Consequences

If a district determines that a student has cheated or attempted to cheat on a state assessment either by providing or receiving direct assistance, the district shall invalidate the student's test results.

Any violation of test security or confidential integrity may result in TEA:

1. Invalidating student test results;
2. Referring certified educators to the State Board for Educator Certification (SBEC) for sanctions in accordance with 19 Administrative Code Chapter 247 (Educators' Code of Ethics) and Chapter 249 (Disciplinary Proceedings, Sanctions, and Contested Cases); and
3. Lowering the district's accreditation status or a district's or campus's accountability rating in accordance with Education Code 39.057(d), or appointment of a monitor, conservator, or management team to the district in accordance with Education Code Chapter 39A.

Test Administration
Procedures

Test administration procedures shall be delineated in the test administration materials provided to districts annually. Districts must comply with all of the applicable requirements specified in the test administration materials.

Districts shall ensure that test coordinators and administrators receive training to ensure that testing personnel have the necessary

skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner.

Records Retention As part of test administration procedures, the commissioner shall require districts to maintain records related to the security of assessment instruments for five years.

19 TAC 101.3031(a-3)–(d)

Disciplinary Action and Penalties SBEC may take disciplinary action against a person who has violated the security or integrity of any assessment required by Education Code Chapter 39, Subchapter B or has committed an act that is a departure from the test administration procedures established by the commissioner under 19 Administrative Code Chapter 101.

The superintendent and campus principal must develop procedures to ensure the security and confidentiality of the tests and will be responsible for notifying TEA in writing of conduct that violates the security or confidentiality of a test. Failure to report can subject the person responsible to the applicable penalties.

19 TAC 249.15(a)–(b), (g)

Minimize Disruptions In implementing the commissioner’s procedures for the administration of assessment instruments adopted or developed under Education Code 39.023, including procedures designed to ensure the security of the assessment, a district shall minimize disruptions to school operations and the classroom environment. *Education Code 39.0301(a-1)*

Confidentiality of Results Individual student performance results are confidential and may be released only in accordance with the Family Educational Rights and Privacy Act of 1974. *Education Code 39.030(b)* [See FL and GBA]

Definition For the purpose of this policy, “parent” is the person who is indicated on the student registration form at the campus. The signature of only one parent of a student is required for a charter created by petition or a cooperative program charter. *Education Code 12.051(1), .052(b), .053(b)*

Policy A district shall adopt a campus charter and program charter policy, which shall specify the:

1. Process for approval of a campus charter or program charter;
2. Statutory requirements with which a campus charter or program charter must comply; and
3. Items that must be included in a charter application.

Education Code 12.058

Campus or Program Charter A board may grant a charter to parents and teachers for a campus or a program on a campus.

A board shall grant or deny the charter, through a public vote, if the board is presented with a petition signed by:

1. The parents of a majority of the students at that campus; and
2. A majority of the classroom teachers at that campus.

A board may not arbitrarily deny a charter.

Education Code 12.052

New Campus or Contract Charter A board may grant a charter for:

1. A new district campus; or
2. A program that is operated:
 - a. By an entity that has entered into a contract with the district under Education Code 11.157 [see EEL] to provide educational services to the district through the campus or program; and
 - b. At a facility located in the boundaries of the district.

Voluntary Enrollment A student’s parent or guardian may choose to enroll the student at a campus or in a program charter. A district may not assign a student to the campus or program unless the student’s parent or guardian has voluntarily enrolled the student.

Parental Removal A student’s parent or guardian may, at any time, remove the student from the campus or program and enroll the student at the campus to which the student would ordinarily be assigned.

Teacher
Assignment

A district may not assign to the campus or program a teacher who has signed a written statement that the teacher does not agree to that assignment.

Education Code 12.0521

Contract Charter
Funding

A district under contract with an open-enrollment charter school to jointly operate a campus or campus program during the 2017–18 school year and under any renewal of that contract is eligible to receive funding under Education Code 42.2511 for each student or the portion of each student’s school day under the direction of the open-enrollment charter school. Education Code 11.157(b); 19 TAC 61.1010

District Charter

A board may grant a district charter to a campus.

Enrollment Limit

A district charter may be granted only to one or more campuses serving in total a percentage of the district's student enrollment equal to not more than 15 percent of the district's student enrollment for the preceding school year.

Exception

The percentage limit may not prevent a district from granting a district charter to at least one feeder pattern of schools, including an elementary, middle or junior high, and high school.

A district charter may be granted to any campus that has received the lowest performance rating under Subchapter C, Chapter 39, Education Code.

Open-Enrollment
Charter School

Subchapter D, Chapter 39, Education Code (~~related to~~ open-enrollment charter schools) applies to a campus granted a district charter as though the campus were granted a charter under that subchapter, and the campus is considered an open-enrollment charter school.

A district charter is not considered for purposes of the limit on the number of charters for open-enrollment charter schools imposed by Education Code 12.101.

Education Code 12.0522

**Cooperative Campus
Charter**

A board may grant a charter to parents and teachers at two or more campuses in the district for a cooperative charter program if the board is presented with a petition signed by:

1. The parents of a majority of the students at each school; and
2. A majority of the classroom teachers at each school.

Education Code 12.053

Performance Contract

A board that grants a charter shall enter into a performance contract with the principal or equivalent chief operating officer of the campus or program. The performance contract must specify enhanced authority granted to the principal or equivalent officer in order to achieve the academic goals that must be met by campus or program students.

Duration of Charter

A charter granted by the board expires ten years from the date the charter is granted unless the specified goals are substantially met, as determined by the board.

Education Code 12.0531

Neighborhood School

A board may determine that a campus granted a charter will be a neighborhood school.

The principal or equivalent chief operating officer of a neighborhood school shall manage the funding provided for the school under the Education Code and any other funding provided for the school in the manner the principal or other officer determines best meets the needs of the school's students. The district in which the school is located may retain that portion of funding that the district generally withholds from a campus for costs associated with the salary of the superintendent or other district governance.

The principal or equivalent chief operating officer of a neighborhood school may use school funding to purchase from the school district in which the school is located services for the school, including bus service, facilities maintenance services, and other services generally provided by a school district to district campuses. The school shall pay for each service an amount that reflects the actual cost to the district of providing the service for the number of the school's students for which the service is provided.

Education Code 12.0532

Student Eligibility

Eligibility criteria for admission of students to the charter campus or program must give priority on the basis of geographic and residency considerations. After priority is given on those bases, secondary consideration may be given to a student's age, grade level, or academic credentials, in general or in a specific area, as necessary for the type of program offered.

The campus or program may require an applicant to submit an application not later than a reasonable deadline the campus or program establishes.

Education Code 12.065

Exemption

A campus or program for which a charter is granted is exempt from the instructional and academic rules and policies of the board from which the campus or program is specifically exempted in the charter and retains the authority to operate under the charter only if students at the campus or in the program perform satisfactorily as provided by the charter. *Education Code 12.054*

Charter Contract

A charter shall be in the form and substance of a written contract signed by a board president and the chief operating officer of the campus or program for which the charter is granted. *Education Code 12.060*

Each charter shall:

1. Satisfy the requirements governing charter campuses and programs; and
2. Include all information required to be in the content of the charter consistent with the information provided in the application and any modification a board requires.

Education Code 12.061

Content of Charter

Each charter granted must:

1. Describe the educational program to be offered, which may be a general or specialized program;
2. Provide that continuation of the charter is contingent on satisfactory student performance on state-required assessment instruments, satisfactory financial performance under state financial accountability provisions, and on compliance with other applicable accountability provisions;
3. Specify any basis, in addition to a basis specified in Education Code Chapter 12, Subchapter C, on which the charter may be revoked;
4. Prohibit discrimination in admission on the basis of national origin, ethnicity, race, religion, or disability;
5. Describe the governing structure of the campus or program;
6. Specify any procedure or requirement, in addition to those under Education Code Chapter 38, that the campus or program will follow to ensure the health and safety of students and employees; and
7. Describe the manner in which an annual audit of financial and programmatic operations of the campus or program is to be

conducted, including the manner in which the campus or program will provide information necessary for the district in which it is located to participate in PEIMS.

Education Code 12.059

Revision

A charter created by petition or a cooperative charter program may be revised with board approval and on a petition signed by a majority of the parents and a majority of the classroom teachers at the campus or in the program, as applicable.

A charter created without a petition may be revised with the approval of the board of trustees that granted the charter. The charter may be revised only before the first day of instruction or after the final day of instruction of a school year.

Education Code 12.062

Failure to Discharge or Refuse to Hire

A charter campus or program commits a material violation of its charter if the campus or program fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under Education Codes 12.1059, 22.085, or 22.092. *Education Code 12.0631*

Applicability of Laws

A charter campus or program is subject to federal and state laws and rules governing public schools, except that the charter campus or program is subject to the Education Code and rules adopted thereunder only to the extent that the code or rule specifically provides. *Education Code 12.055(a)*

Education Code

A charter campus or program has the powers granted to schools under the Education Code.

A charter campus or program is subject to:

1. Provisions of the Education Code establishing criminal offenses;
2. Prohibitions, restrictions, or requirements of the Education Code, or a rule adopted under the Education Code, relating to:
 - a. PEIMS, to the extent necessary to monitor compliance, as determined by the commissioner;
 - b. Criminal history records under Subchapter C, Chapter 22;
 - c. High school graduation under Section 28.025;
 - d. Special education programs under Subchapter A, Chapter 29;

- e. Bilingual education under Subchapter B, Chapter 29;
- f. Prekindergarten programs under Subchapter E, Chapter 29;
- g. Extracurricular activities under Section 33.081 (i.e., “no pass-no play”);
- h. Health and safety under Chapter 38 (including immunizations, dyslexia and related disorders, child abuse reporting, protective eye devices, tobacco and alcohol use, steroid use, access to medical records, and referrals to outside counselors);
- i. Public school accountability under Subchapter B, C, D, F, and J, Chapter 39, and Chapter 39A; and
- j. The duty to discharge or refuse to hire certain employees or applicants for employment under Education Code 12.1059.

Education Code 12.056

Open Meetings and Public Information Acts

With respect to the operation of a campus or program charter, the governing body of the charter campus or program is considered a governmental body for purposes of Government Code Chapters 551 (Open Meetings Act) and 552 (Public Information Act). *Education Code 12.057(a)*

Teacher Retirement System

A district may contract with another district or an open-enrollment charter holder for services at a campus charter. An employee of the district or open-enrollment charter holder providing contracted services to a campus charter is eligible for membership in and benefits from the Teacher Retirement System of Texas (TRS) if the employee would be eligible for membership and benefits if holding the same position at the employing district or open-enrollment charter school operated by the charter holder. *Education Code 12.055(b)*

An employee of an independent school district who is employed on a charter campus or program who qualifies for membership in TRS shall be covered under the system in the same manner and to the same extent as a qualified employee of the independent school district who is employed on a regularly operating campus or in a regularly operating program.

An employee of a charter holder who is employed on a campus or in a program granted a charter and who qualifies for membership in TRS shall be covered under the system in the same manner and to the same extent as a qualified employee of an independent

school district who is employed on a regularly operating campus or in a regularly operating program.

Education Code 12.057(b), (b-1)

Liability

A charter campus or program, and its employees and volunteers, are immune from liability to the same extent as a district, its employees, and volunteers, respectively. *Education Code 12.057(c)*

Placement on Probation or Revocation

A board may place on probation or revoke a charter it grants if the board determines that the campus or program:

1. Committed a material violation of the charter, including by failure to comply with the duty to discharge or refuse to hire certain employees or applicants for employment, as provided by Education Code 12.0631;
2. Failed to satisfy generally accepted accounting standards of fiscal management; or
3. Failed to comply with law governing a charter campus or program, another law, or a state agency rule.

The action a board takes under any item above shall be based on the best interest of campus or program students, the severity of the violation, and any previous violation the campus or program has committed.

Education Code 12.063

Procedure

Each board that grants a charter shall adopt a procedure to be used for placing on probation or revoking a charter it grants.

This procedure must provide an opportunity for a hearing to the campus or program for which the charter is granted and to parents and guardians of students at the campus or in the program. A hearing must be held on the campus or on one of the campuses in the case of a cooperative charter program.

Education Code 12.064

Consent to Medical Treatment

The school in which a minor student is enrolled may consent to medical, dental, psychological, and surgical treatment of that student, provided all of the following conditions are met:

1. The person having the power to consent as otherwise provided by law cannot be contacted.
2. Actual notice to the contrary has not been given by that person.
3. Written authorization to consent has been received from that person.

Family Code 32.001(a)(4)

Form of Consent

Consent to medical treatment under this policy shall be in writing, signed by the school official giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment. The consent must contain:

1. The name of the student.
2. The name of one or both parents, if known, and the name of the managing conservator or guardian of the student, if either has been appointed.
3. The name of the person giving consent and the person's relation to the student.
4. A statement of the nature of the medical treatment to be given.
5. The date on which the treatment is to begin.

Family Code 32.002

Minor's Consent to Treatment

A minor may consent to medical, dental, psychological, and surgical treatment furnished by a licensed physician or dentist if the minor:

1. Is 16 years of age and residing separate and apart from the minor's parents, managing conservator, or guardian, with or without the consent of the parents, conservator, or guardian and regardless of the duration of the residence, and is managing his or her own financial affairs, regardless of the source of the income;
2. Consents to the diagnosis and treatment of any infectious, contagious, or communicable disease required to be reported to the Texas Department of State Health Services (DSHS), including all reportable diseases under Health and Safety Code 81.041;

3. Is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy; or
4. Consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use.

Family Code 32.003; Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52 (1976); Bellotti v. Baird, 443 U.S. 622 (1979)

Administering Medication

Upon adoption of policies concerning the administration of medication to students by district employees, the district, its board, and its employees are immune as described below, provided:

1. The district has received a written request to administer the medication from the parent, legal guardian, or other person having legal control of the student.
2. When administering prescription medication, the medication is administered either:
 - a. From a container that appears to be the original container and to be properly labeled; or
 - b. From a properly labeled unit dosage container filled by a registered nurse or another qualified district employee, as determined by district policy, from a container that appears to be the original container and to be properly labeled.

By Volunteer Professionals

If a district provides liability insurance for a licensed physician or registered nurse who provides volunteer services to the district, a board may allow the physician or nurse to administer to any student nonprescription medication or medication currently prescribed for the student by the student's personal physician.

Immunity from Civil Liability

A district, a board, and its employees shall be immune from civil liability for damages or injuries resulting from the administration of medication to a student in accordance with this policy.

Education Code 22.052(a), (b)

[See DG regarding protection of nurses for refusal to perform acts.]

Self-Administration of Asthma or Anaphylaxis Medicine

A student with asthma or anaphylaxis may possess and self-administer prescription asthma or anaphylaxis medicine while on school property or at a school-related event or activity if:

1. The medicine has been prescribed for that student as indicated by the prescription label on the medicine;

2. The student has demonstrated to the student's physician or other licensed health-care provider and the school nurse, if available, the skill level necessary to self-administer the prescription medication, including the use of any device required to administer the medication;
3. The self-administration is done in compliance with the prescription or written instructions from the student's physician or other licensed health-care provider; and
4. A parent of the student provides to the school:
 - a. Written authorization, signed by the parent, for the student to self-administer the prescription medicine while on school property or at a school-related event or activity; and
 - b. A written statement, signed by the student's physician or other licensed health-care provider, that states:
 - (1) That the student has asthma or anaphylaxis and is capable of self-administering the medicine;
 - (2) The name and purpose of the medicine;
 - (3) The prescribed dosage for the medicine;
 - (4) The times at which or circumstances under which the medicine may be administered; and
 - (5) The period for which the medicine is prescribed.

The physician's statement must be kept on file in the school nurse's office, or, if there is no school nurse, in the office of the principal of the school the student attends.

[See FFAF for care of students with diagnosed food allergies at risk for anaphylaxis.]

No Waiver of
Immunity

The provisions above neither waive any liability or immunity nor create any liability for or a cause of action against a district, a board, or its employees.

Education Code 38.015

Sunscreen Products

A student may possess and use a topical sunscreen product while on school property or at a school-related event or activity to avoid overexposure to the sun and not for the medical treatment of an injury or illness if the product is approved by the federal Food and Drug Administration for over-the-counter use. This provision does not waive any immunity from liability of a district, its board, or its

employees; or create any liability for or a cause of action against a district, its board, or its employees. *Education Code 38.021*

Dietary Supplements

A district employee commits a Class C misdemeanor offense if the employee:

1. Knowingly sells, markets, or distributes a dietary supplement that contains performance enhancing compounds to a primary or secondary education student with whom the employee has contact as part of the employee's school district duties; or
2. Knowingly endorses or suggests the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance enhancing compounds by a primary or secondary education student with whom the employee has contact as part of the employee's school district duties.

Education Code 38.011(a), (c)

**Prescription
Medication and
Special Education
Students**

An employee of a district is prohibited from requiring a child to obtain a prescription for a substance covered under the federal Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation for special education, or receiving special education and related services.

An employee is not prohibited from consulting or sharing classroom-based observations with parents regarding a student's academic and functional performance, behavior in the classroom or school, or the need for evaluation for special education or related services.

20 U.S.C. 1412(a)(25)

[See FFEB for information regarding psychotropic drugs and psychiatric evaluations]

**Opioid Antagonist
Medication**

A person or organization acting under a standing order issued by a prescriber may store an opioid antagonist and may distribute an opioid antagonist, provided the person or organization does not request or receive compensation for storage or distribution. *Health and Safety Code 483.104*

A prescriber may, directly or by standing order, prescribe an opioid antagonist to a person in a position to assist a person experiencing an opioid-related drug overdose. *Health and Safety Code 483.102; 22 TAC 170.6*

Immunity

A person who, acting in good faith and with reasonable care, administers or does not administer an opioid antagonist to another person whom the person believes is suffering an opioid-related

drug overdose is not subject to criminal prosecution, sanction under any professional licensing statute, or civil liability, for an act or omission resulting from the administration of or failure to administer the opioid antagonist. *Health and Safety Code 483.106*

Low-THC Cannabis

A district may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, production, dispensing, or possession of low-THC cannabis, as authorized by the Texas Compassionate-Use Act. *Health and Safety Code 487.201*

**Dextromethorphan
(Certain Cold
Medication)**

A district may not adopt or enforce an ordinance, order, rule, regulation, or policy that governs the sale, distribution, or possession of dextromethorphan. *Health and Safety Code 488.005*

Note: The following provisions apply only to a district that will adopt an unassigned epinephrine auto-injector policy or an unassigned asthma medication policy.

**Maintenance and
Administration of
Epinephrine Auto-
Injectors**

A district may adopt and implement a policy regarding the maintenance, administration, and disposal of epinephrine auto-injectors at each campus in the district.

If a policy is adopted, the policy:

1. Must provide that school personnel and school volunteers who are authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis on a school campus; and
2. May provide that school personnel and school volunteers who are authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis at an off-campus school event or while in transit to or from a school event.

A district that adopts a policy must require that each campus have one or more school personnel members or school volunteers authorized and trained to administer an epinephrine auto-injector present during all hours the campus is open.

The supply of epinephrine auto-injectors at each campus must be stored in a secure location and be easily accessible to school personnel and school volunteers authorized and trained to administer an epinephrine auto-injector.

Education Code 38.208

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| Definitions | <p>“All hours the campus is open” is defined as, at a minimum, during regular on-campus school hours, and when school personnel are physically on site for school-sponsored activities.</p> |
| <i>All Hours the Campus Is Open</i> | |
| <i>Campus</i> | <p>A “campus” is defined as a unit of a school district that has an assigned administrator, has enrolled students who are counted for average daily attendance, has assigned instructional staff, provides instructional services to students, has one or more grades in the range from early childhood education through grade 12 or is ungraded, and complies with relevant Texas laws.</p> |
| <i>Unassigned Epinephrine Auto-Injector</i> | <p>An “unassigned epinephrine auto-injector” is an epinephrine auto-injector prescribed by an authorized health-care provider in the name of the school issued with a non-patient-specific standing delegation order for the administration of an epinephrine auto-injector, issued by a physician or person who has been delegated prescriptive authority under Occupations Code Chapter 157.</p> <p><i>25 TAC 37.603</i></p> |
| Prompt Notification | <p>Local emergency medical services must be promptly notified by the school when an individual is suspected of experiencing anaphylaxis and when an epinephrine auto-injector is administered. If the trained school personnel or school volunteer is the only individual available to notify emergency medical services, the trained individual should administer the unassigned epinephrine auto-injector before notifying emergency medical services.</p> <p>The parent, legal guardian, or emergency contact must be promptly notified by the school when an unassigned epinephrine auto-injector is utilized on their child as soon as is feasible during the emergency response to suspected anaphylaxis.</p> <p><i>25 TAC 37.605(e)–(f)</i></p> |
| Records | <p>School records of the administration of the unassigned epinephrine auto-injector and suspected anaphylaxis must be provided to the parent or guardian of the recipient upon request. <i>25 TAC 37.605(f)</i></p> |
| Reports | <p>Not later than the tenth business day after the date a school personnel member or school volunteer administers an epinephrine auto-injector in accordance with district policy, the school shall send a report to the school district; the physician who prescribed the epinephrine auto-injector; and the commissioner of state health services.</p> <p>The report must include the following information:</p> <ol style="list-style-type: none">1. The age of the person who received the administration of the epinephrine auto-injector; |

2. Whether the person who received the administration of the epinephrine auto-injector was a student, a school personnel member or school volunteer, or a visitor;
3. The physical location where the epinephrine auto-injector was administered;
4. The number of doses of epinephrine auto-injector administered;
5. The title of the person who administered the epinephrine auto-injector; and
6. Any other information required by the commissioner of education.

Education Code 38.209

Notifications to the commissioner of DSHS shall be submitted on the designated electronic form available on the DSHS School Health Program website. *25 TAC 37.608*

Personnel or
Volunteers

At each campus in which a school adopts an unassigned epinephrine auto-injector policy, the principal may assign school personnel or school volunteers to be trained to administer unassigned epinephrine auto-injectors or seek school personnel or school volunteers who volunteer to be trained to administer unassigned epinephrine auto-injectors.

In order to increase the number of trained individuals in the administration of unassigned epinephrine auto-injectors, schools may distribute to school personnel or school volunteers in the district, at least once per school year, a notice that includes a description of the request seeking volunteers to be trained to administer an epinephrine auto-injector to a person believed to be experiencing anaphylaxis and a description of the training that the school personnel or school volunteers will receive in the administration of epinephrine with an auto-injector.

25 TAC 37.606(a)–(b)

Signed Statement

Trained school personnel or school volunteers who administer the unassigned epinephrine auto-injector must submit a signed statement indicating that they agree to perform the service of administering an unassigned epinephrine auto-injector to a student or individual that may be experiencing anaphylaxis. *25 TAC 37.606(c)*

Training

A district that adopts an unassigned epinephrine auto-injector written policy is responsible for training school personnel and school volunteers in the recognizing of anaphylaxis signs and symptoms and administration of an unassigned epinephrine auto-injector.

Each assigned school personnel or school volunteer shall receive initial training and an annual refresher training. Training shall be consistent with the most recent [Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs](#)¹ published by the federal Centers for Disease Control and Prevention.

25 TAC 37.607

Training may be provided in a formal training session or through an online education course. Training must include information on properly inspecting unassigned epinephrine auto-injectors for usage and expiration. *25 TAC 37.607(1)–(2)*

Training must include information on implementing emergency procedures, if necessary, after administering an epinephrine auto-injector, and properly disposing of used or expired epinephrine auto-injectors. A district shall maintain records on the required training. *Education Code 38.210*

The initial training must include hands-on training with an epinephrine auto-injector trainer. The annual refresher training must include a hands-on demonstration of administration skills. The training must also include information about promptly notifying local emergency medical services.

Each school campus shall maintain training records and make available upon request a list of those school personnel or school volunteers trained and authorized to administer the unassigned epinephrine auto-injector on the campus.

25 TAC 37.607(3)–(6)

Standing Orders

A physician or person who has been delegated prescriptive authority under Occupations Code Chapter 157 may prescribe epinephrine auto-injectors in the name of a district in accordance with law. *Education Code 38.211*

A district shall obtain a prescription from an authorized health-care provider each year, to stock, possess, and maintain at least one unassigned adult epinephrine auto-injector pack (two doses) on each school campus.

A school may choose to stock unassigned pediatric epinephrine auto-injector packs, based on the need of the school's population.

25 TAC 37.605(a)

Epinephrine
Coordinator

The superintendent will designate appropriate school personnel to coordinate and manage policy implementation, including training of

school personnel, and the acquisition or purchase, usage, expiration, and disposal of unassigned epinephrine auto-injectors. Throughout the school calendar year, the designated school personnel shall coordinate with each campus to ensure that the unassigned epinephrine auto-injectors are checked monthly for expiration and usage and the findings are documented. *19 TAC 37.605(b)*

Notice to Parents If a district implements a policy for the maintenance, administration, and disposal of epinephrine auto-injectors, the district shall provide written notice to a parent or guardian of each student enrolled in the district or school. Notice must be provided before the policy is implemented by the district or school and before the start of each school year. *Education Code 38.212*

A district shall provide electronic or written notice to the parent or guardian of each student.

If a district changes or discontinues the policy under this subchapter, written or electronic notice detailing the change or discontinuation must be provided to the parent or guardian of each student within 15 calendar days.

25 TAC 37.609

Storage Unassigned epinephrine auto-injectors shall be stored in a secure, easily accessible area for an emergency, in accordance with manufacturer's guidelines. It is recommended that the school administrator develop a map to be placed in high traffic areas that indicates the location of the unassigned epinephrine auto-injectors on each school campus. It is recommended that the map also indicate the locations of the automated external defibrillator (AED). *25 TAC 37.605(h)*

Replacement The district shall develop a plan to replace, as soon as reasonably possible, any unassigned epinephrine auto-injector that is used or close to expiration. *25 TAC 37.605(i)*

Disposal Used unassigned epinephrine auto-injectors shall be considered infectious waste and shall be disposed of according to the school's bloodborne pathogen control policy.

Expired unassigned epinephrine auto-injectors shall be disposed of according to the school's medication disposal policy.

25 TAC 37.605(j)–(k) [See DBB]

Gifts, Grants, and Donations A district may accept gifts, grants, donations, and federal and local funds to implement its policy. *Education Code 38.213*

Maintenance and Administration of Asthma Medicine

A district may voluntarily adopt and implement a written policy ~~authorizing a school nurse to maintain~~ regarding the maintenance, administration, and administer disposal of asthma ~~medicine~~ medication at each campus ~~in the district~~. If a written policy is adopted, the unassigned asthma medication policy must comply with Education Code 38.208. 25 TAC 40.44(a)

The policy must provide that the school nurse may administer prescription asthma medicine to a student only if the school nurse has written notification from a parent or guardian of the student stating that the student has been diagnosed as having asthma and stating that the school nurse may administer prescription asthma medicine to the student. A school nurse may administer the prescription asthma medicine only at a school campus. Education Code 38.208(b-1)

Definitions

Authorized Health-care Provider

“Authorized health-care provider” means a physician, as defined in Education Code 38.201, or person who has been delegated prescriptive authority by a physician under Occupations Code Chapter 157.

Campus

“Campus” means a geographic unit of a school district that:

1. Has an assigned administrator;
2. Has enrolled students who are counted for average daily attendance;
3. Has assigned instructional staff;
4. Provides instructional services to students;
5. Has one or more grades in the range from early childhood education through grade 12 or is ungraded; and
6. Is subject to Texas laws.

School Nurse

“School nurse” means a registered nurse, as defined in 19 Administrative Code 153.1022, authorized to administer asthma medication, or licensed vocational nurse working under supervision as described in Occupations Code 301.353. [See DP]

Unassigned Asthma Medication

“Unassigned asthma medication” means a fast acting bronchodilator delivered by metered dose inhaler with single use spacer or by nebulizer as a rescue medication, prescribed by an authorized health-care provider in the name of the district with a non-patient-specific standing delegation order for the administration of an asthma medication, and issued by an authorized health-care provider.

25 TAC 40.42

Minimum Dosage Requirement

Subject to the availability of funding, a district that adopts such a policy must secure or obtain the suggested minimum dosage of unassigned asthma medication. 25 TAC 40.44 (a)(2)

Once a district voluntarily adopts an unassigned asthma medication policy, a campus that implements an unassigned asthma medication policy must stock unassigned asthma medication, subject to available funding, as defined by 25 Administrative Code 40.44. 25 TAC 40.45(a)

Optional Review

In development of an unassigned asthma medication policy, a district may consider performing a review to include consultation with school nurses, the local school health advisory committee, local health-care providers, or any department or organization involved with student well-being; campus geography; and student population size.

Policy Requirements

If a district voluntarily adopts an unassigned asthma medication policy, the policy must include: A process to obtain written authorization from a parent or guardian of the student that the student has been diagnosed as having asthma and stating that the school nurse may administer unassigned asthma medication to the student;

2. A designated campus administrator to coordinate and manage policy implementation that includes:
 - a. Whether to conduct a review at the campus to determine the need for additional doses;
 - b. Training of school nurses;
 - c. Acquiring or purchasing, maintaining, storing, and using unassigned asthma medication, subject to available campus funding; and
 - d. Disposing of expired unassigned asthma medication;
3. A list of school nurses who will be assigned to administer unassigned asthma medication;
4. Locations of unassigned asthma medication;
5. Procedures for notifying a parent, prescribing authorized health-care provider, and the student's primary health-care provider when unassigned asthma medication is administered; and
6. A plan to replace, as soon as reasonably possible, any unassigned asthma medication that is used or close to expiration.

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| | <p><u>An adopted unassigned asthma medication policy must be publicly available.</u></p> <p><u>25 TAC 40.44(b)-(d)</u></p> <p>The supply of asthma medicine at each campus must be stored in a secure location and be easily accessible to the school nurse.</p> |
| No Negative Fiscal Impact | <p>The policy may not require a district to purchase prescription asthma medicine or require any other expenditure related to the maintenance or administration of asthma medicine that would result in a negative fiscal impact on the district or school. <u>Education Code 38.208(f)</u></p> <p><u>Education Code 38.208(e)-(f)</u></p> |
| Asthma Medicine Standing Order | <p>A physician or person who has been delegated prescriptive authority under Occupations Code Chapter 157, may prescribe asthma medicine in the name of a school district. <i>Education Code 38.211(a)</i></p> <p><u>An authorized health-care provider who prescribes unassigned asthma medication under 25 Administrative Code 40.45(b), below, must provide the campus with a standing order for the administration of unassigned asthma medication to a person who:</u></p> <ol style="list-style-type: none"><u>1. Is reasonably believed to be experiencing a symptom of asthma; and</u><u>2. Has provided written notification and permission as required by the unassigned asthma medication policy.</u> <p><u>25 TAC 40.45(c)</u></p> |
| <u>Prescription of Unassigned Asthma Medicine</u> | <p><u>A campus must obtain a prescription from an authorized health-care provider each year to stock, possess, and maintain at least two doses of unassigned asthma medication on each campus as described in Education Code 38.208 and any equipment necessary to administer the medication.</u></p> <p><u>The campus must renew this prescription or obtain a new prescription annually.</u></p> <p><u>The number of additional doses may be determined by an individual campus review led by an authorized health-care provider.</u></p> <p><u>25 TAC 40.45(b)</u></p> |
| <u>School Nurse Training</u> | <p><u>A district that chooses to adopt a written unassigned asthma medication policy is responsible for training school nurses about:</u></p> <ol style="list-style-type: none"><u>1. The adopted unassigned asthma medication policy;</u> |

- [2. The authorized health-care provider's standing order;](#)
- [3. Follow-up with the prescribing authorized health-care provider and the student's primary health-care provider; and](#)
- [4. The report required after administering an unassigned asthma medication under 25 Administrative Code 40.47 \(see Reports and Records, below\).](#)

[Each campus must maintain training records and must make available upon request a list of school nurses trained and authorized to administer the unassigned asthma medication on the campus.](#)

[25 TAC 40.46](#)

Notice to Parents

[If a district implements an unassigned asthma medication policy, the campus shall provide written or electronic notice to a parent or guardian of each student in accordance with Education Code 38.212.](#)

[If a district changes or discontinues the unassigned asthma medication policy, written or electronic notice detailing the change or discontinuation must be provided to a parent or guardian of each student within 15 calendar days after the change or discontinuation.](#)

[25 TAC 40.48](#)

The district shall provide written notice to a parent or guardian of each student enrolled in the district or school. Notice required under Education Code 38.212 must be provided before a policy is implemented by the district and before the start of each school year. *Education Code 38.212*

[Records and Reporting](#)

[Records relating to implementing and administering the school district unassigned asthma medication policy must be retained per the campus record retention schedule.](#)

[The campus must submit a report no later than the tenth business day after the date a school nurse administers asthma medication in accordance with the unassigned asthma medication policy. The report must be included in the student's permanent record and submitted to the school administrator, prescribing authorized health-care provider, the student's primary health-care provider, and to the Department of State Health Services \(DSHS\) commissioner.](#)

[Notifications to the DSHS commissioner must be submitted on the designated \[electronic form\]\(#\)² available on DSHS's School Health Program website found at \[dshs.texas.gov\]\(#\).](#)

[25 TAC 40.47](#)

[Asthma Medicine Storage and Disposal](#)

[The supply of asthma medicine at each campus must be stored in a secure location and be easily accessible to the school nurse. *Education Code 38.208\(e\)*](#)

[The unassigned asthma medication must be stored in accordance with the manufacturer's guidelines and local policy of the school district.](#)

[Expired unassigned asthma medication and other used or expired supplies must be disposed of in accordance with the manufacturer's guidelines and local policy of the district.](#)

[25 TAC 40.45\(d\)–\(e\)](#)

Immunity from Liability

A person who in good faith takes, or fails to take, any action related to Education Code Chapter 38, Subchapter E, related to the maintenance and administration of epinephrine auto-injectors and asthma medicine, is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act, including:

1. Issuing an order for epinephrine auto-injectors or asthma medicine;
2. Supervising or delegating the administration of an epinephrine auto-injector or asthma medicine;
3. Possessing, maintaining, storing, or disposing of an epinephrine auto-injector or asthma medicine;
4. Prescribing an epinephrine auto-injector or asthma medicine;
5. Dispensing an epinephrine auto-injector or asthma medicine, provided that permission has been granted as provided by Education Code 38.208(b-1) [see Maintenance and Administration of Asthma Medicine, above];
6. Administering, or assisting in administering, an epinephrine auto-injector, provided that permission has been granted as provided by Education Code 38.208(b-1) [see Maintenance and Administration of Epinephrine Auto-Injectors, above];
7. Providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or
8. Undertaking any other act permitted or required under Education Code Chapter 38, Subchapter E.

A district and school personnel and school volunteers are immune from suit resulting from an act, or failure to act, under Education Code Chapter 38, Subchapter E, including an act or failure to act under related policies and procedures.

An act or failure to act by school personnel or a school volunteer, including an act or failure to act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the school district.

Education Code 38.215; [25 TAC 40.49](#)

¹ CDC Voluntary Guidelines for Managing Food Allergies:

<https://www.cdc.gov/healthyschools/foodallergies/index.htm>

² Required Reporting of Administered Unassigned Asthma Medication to DSHS: <https://www.dshs.texas.gov/schoolhealth/forms/ReportingForm-Asthma.aspx>

9. **Closed Session**

A. Acknowledge professional contracts

B. Board to discuss and possible approval of land purchase for the district

1. **551.072 Discussing, purchase, exchange, lease, or value of real property**

10. **Future agenda items and requests**

11. **Adjournment**

If, during the course of the meeting, discussion of any item on the agenda should be held in a closed meeting, the board will conduct a closed meeting in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, Subchapters D and E or Texas Government Code section 418.183(f). Before any closed meeting is convened, the presiding officer will publicly identify the section or sections of the Act authorizing the closed meeting. All final votes, actions, or decisions will be taken in open meeting. [See BEC(LEGAL)]

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on:

For the Board of Trustees