



Notice/Agenda of January 2022 BOT Meeting

**The Board of Trustees
College of the Mainland
Administration Boardroom Rm 129
Monday, January 24, 2022
1200 Amburn Road
Texas City, TX 77591**

January 2022 BOT Meeting of the Board of Trustees of College of the Mainland will be held Monday, January 24, 2022, beginning at 1:30 PM in the Administration Boardroom (Room 129 - New Administration Building), 1200 Amburn Road, Texas City, Texas 77591.

The subjects to be discussed or considered or upon which any formal action may be taken are as listed below. The items listed in this notice may be considered in any order at the discretion of the Chair or Board and items listed for closed session discussion may be discussed and/or approved in open session and vice versa as permitted by law.

Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

1. **Call to Order**
2. **Pledge of Allegiance (American Flag), Texas Pledge & a Moment of Silence**
3. **Roll Call & Determination of Quorum**
4. **Minutes**
 - A. Consideration of and Possible Action to Approve the Full Board Minutes of Tuesday, December 7, 2021
5. **Comments from the Community**
 - A. Students
 - B. Employees
 - C. Other Citizens
6. **Constituent Leader Activity Reports**
 - A. Faculty Senate - Dr. Elaine Childs
7. **Consideration of and Possible Acceptance of the Report from Institutional Advancement for FY2021**
8. **Human Resources Items**
 - A. Consideration of and Possible Acceptance of the Non-Contractual Positions Hiring Report
 - B. Consideration of and Possible Action on the Appointment Nomination of Debra Bauer to the Position of Director of Nursing, Nursing Department
9. **Policy**
 - A. TASB Update 42 - Provided for BOT Review
10. **Consideration of and Possible Approval of the Purchase of Network Hardware, Licensing, Configuration, and Installation Services in an Amount Not to Exceed \$210,000**

11. **Consideration of and Possible Approval of the 2022-2023 Property and Casualty Insurance Renewals as Stated in the 2022-2023 RWL Group Proposal Analysis for an Amount Not-to-Exceed \$2,000,000 to be Paid from FY21-22 Operating Budget**
12. **Financial Report(s)**
 - A. Consideration of and Possible Acceptance of the November 2021 Investment and Financial Reports
 - B. Consideration of and Possible Acceptance of the December 2021 Investment and the December 2021 Financial Reports
13. **Consideration of and Possible Action to Appoint a Representative to the Lago Mar TERZ Board**
14. **Consideration of and Possible Action to Set the March Board of Trustees Meeting on Wednesday, March 30th**
15. **Board Report**
16. **President's Report**
 - A. Updates
 1. Enrollment Update - Dr. Helen Brewer, Vice President for Student Services
 2. Bond Project Updates
 - B. Reminders/Announcements
 1. Board Meetings
February 2022 - Monday, February 28th, 1:30 p.m.
March 2022 - Wednesday, March 30th, 1:30 p.m. (tentative)
 2. College of the Mainland voted Texas City/La Marque Chamber's Large Business of the Year
 - C. Resignations and Retirement Report
 - D. Miscellaneous
17. **Adjournment to closed or executive session pursuant to Texas Government Code of the Open Meetings Act**
18. **Adjourn**

**If, during the course of the meeting, discussion of any item on the agenda should be held in a closed meeting, the Board reserves the right to conduct a closed meeting in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551, Subchapters D and E, including but not limited to the following provisions; 1)Section 551.071-consultation with attorney, 2)Section 551.072-deliberation regarding real property, 3) Section 551.073-deliberation regarding prospective gifts, 4)Section 551.074-deliberation regarding personnel matters, and/or complaints against school personnel, 5)Section 551.082-deliberation regarding student disciplinary matters and/or complaints against personnel. 6)Section 551.087-deliberation regarding economic development negotiations, and/or 7)Section 551.089 – deliberation regarding security devices or security audits. 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.*

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on, The notice for this meeting was posted in compliance with the Texas Open Meeting Act on, Thursday, January 20, 2022, 3:00 P.M..



Rosie E. Rojas

Board Clerk

Administration

President Warren Nichols Ed.D.

Vice President Jerry Fliger, Ph.D.

Vice President Glen Burton, Ph.D.
Vice President Helen Brewer, Ph.D.



PRESIDENT'S OFFICE

Call to Order

Call to Order on (insert date)
at (insert time)



PRESIDENT'S OFFICE

Pledge of Allegiance to the American Flag
Texas Pledge
Moment of Silence

The Texas State Flag Pledge
"Honor the Texas flag; I pledge
allegiance to thee, Texas, one state under
God, one and indivisible."



College of the Mainland
Board of Trustees
2021-2023

Dr. Bill McGarvey,
Board Chair
808 Buttonwood Dr.
Texas City, TX 77591
409-770-3537
wmcgarvey@gmail.com

Mr. Alan L. Waters,
Board Vice Chair
#1 South Pintail Street
La Marque, TX 77568
409-655-5055
awaters1@com.edu

Mrs. Melissa Skipworth,
Board Secretary
1061 Misty Cliff
Dickinson, TX 77539
281-684-9146
mskipworth@com.edu

Dr. Verna J. Henson,
Trustee
7306 Heron Ln.
Texas City, TX 77591
409-995-0948
vhenson@com.edu

Mr. Kyle L. Dickson,
Trustee
2514 Pilgrim Estate Dr.
Texas City, TX 77590
281-488-0630
dickson@murray-lobb.com

Mrs. Dawn King,
Trustee
P.O. Box 1105
Dickinson, TX 77539
832-860-0663
dking4@com.edu

Mr. Don Gartman,
Trustee
2538 Quaker Dr.
Texas City, 77590
409-739-2618
dgartman@com.edu



MINUTE ORDER

To: Board of Trustees
From: Dr. Warren Nichols, President
Date: January 24, 2022
Subject: Full Board Minutes

Presented for recommended acceptance to Board of Trustees on the same date.

MINUTE ORDER

Motion to be acted upon: "I move the Board of Trustees approve the Full Board Minutes of December 7, 2021.

PURPOSE

To ensure accuracy of the monthly minutes.

BACKGROUND

Minutes are brought forward every month for approval.

IMPLICATIONS

Financial: N/A

Strategic Goal #1: Strategic Goal #5: College of the Mainland will provide services/processes that enhance the integrity/safety/quality of the institution (including physical facilities) and that enhance the quality of the faculty and staff.

Human Resources: N/A

Attachments

1. Minutes of 12/7/21

**College of the Mainland Board of Trustees
Minutes of Tuesday, December 7, 2021
1:30 p.m., COM Administration Boardroom**

Call to Order

Bill McGarvey called the meeting to order at 1:30 p.m.

Pledge of Allegiance (American Flag), Texas Pledge & a Moment of Silence

Roll Call & Determination of Quorum

Roll call indicated that all Trustees were present, except Alan Waters.

Minutes

Consideration of and Possible Action to Approve the Full Board Minutes of Monday, October 25, 2021

Melissa Skipworth moved for approval of the Full Board Minutes of Monday, October 25, 2021. Dawn King seconded the motion; all voted in approval.

Comments from the Community

There were no comments this month.

Constituent Leader Activity Reports

No reports this month.

Consideration of and Possible Acceptance of the Annual Internal Audit Report, as Presented on October 25, 2021

Dan Hernandez, Senior Manager, Whitley Penn presented the annual internal audit report. An unmodified, clean opinion will be filed with the Federal Audit Clearinghouse. Verna Henson moved the Board of Trustees accept the 2020-2021 Annual Financial and Compliance Report. Melissa Skipworth seconded the motion; all voted in approval.

Internal Auditor Report(s)

Consideration of and Possible Acceptance of the Internal Audit Report on Student Services, as Presented on October 25, 2021

Verna Henson moved the Board of Trustees accept the Internal Audit Report on Student Services, as presented on December 7, 2021. Kyle Dickson seconded the motion; all voted in approval.

Consideration of the Possible Acceptance of the Annual Internal Audit Report, as Presented on December 7, 2021

Melissa Skipworth moved the Board of Trustees accept the Annual Internal Audit Report, as presented on December 7, 2021. Verna Henson seconded the motion; all voted in approval.

Human Resources Items

Appointment Nominations

Consideration of and Possible Approval of the Appointment Nomination of Valerie Andrews to the Position of Assistant Professor of Nursing, Nursing Department

Melissa Skipworth moved the Board of Trustees approve the appointment of Valerie Andrews to the position of Assistant Professor of Nursing, Nursing Department. Kyle Dickson seconded the motion; all voted in approval.

Consideration of and Possible Action on the Appointment Nomination of Timothy Bacon to the Position of Director of Facility Services, Fiscal Affairs Division

Kyle Dickson moved the Board of Trustees approve the appointment of Timothy Bacon to the position of Director of Facility Services, Fiscal Affairs Division. Don Gartman seconded the motion; all voted in approval.

Consideration of and Possible Action to Approve the Appointment Nomination of Sean Curcio to the Position of Professional Tutor, Tutoring Center

Verna Henson moved the Board of Trustees approve the appointment of Sean Curcio to the position of Professional Tutor, Tutoring Center. Kyle Dickson seconded the motion; all voted in approval.

Consideration of and Possible Approval of the Appointment Nomination of Shari Manning to the Position of Assistant Professor of Nursing, Nursing Department

Melissa Skipworth moved the Board of Trustees approve the appointment of Shari Manning to the position of Assistant Professor of Nursing, Nursing Department. Kyle Dickson seconded the motion; all voted in approval.

Consideration of and Possible Approval of the Appointment Nomination of Kayla Molnar to the Position of Lead Enrollment Coach, Strategic Enrollment Management Department

Kyle Dickson moved the Board of Trustees approve the appointment of Kayla Molnar to the position of Lead Enrollment Coach, Strategic Enrollment Management Department. Melissa Skipworth seconded the motion; all voted in approval.

Consideration of and Possible Approval of the Appointment Nomination of Genevieve Onyirioha to the Position of Assistant Professor of Nursing, Nursing Department

Melissa Skipworth moved the Board of Trustees approve the appointment of Genevieve Onyirioha to the position of Assistant Professor of Nursing, Nursing Department. Verna Henson seconded the motion; all voted in approval.

Consideration of and Possible Approval of the Appointment Nomination of Bailey Rhodes to the Position of Media Specialist, Educational Technology Services Department

Verna Henson moved the Board of Trustees approve the appointment of Bailey Rhodes to the position of Media Specialist, Educational Technology Services Department. Kyle Dickson seconded the motion; all voted in approval.

Consideration of and Possible Approval of the Appointment Nomination of Carol Smith to the Position of Faculty - Health Information Management, Health Information Management Department

Melissa Skipworth moved the Board of Trustees approve the appointment of Carol Smith to the position of Faculty – Health Information Management, Health Information Management Department. Kyle Dickson seconded the motion; all voted in approval.

Consideration of and Possible Acceptance of the Non-Contractual Positions Hiring Report

Verna Henson moved the Board of Trustees accept the Non-Contractual Positions Hiring Report as written. Melissa Skipworth seconded the motion; all voted in approval.

Policy

Provided for Review and Information: TASB Legal Policy Update 42

Consideration of and Possible Action to Award Contract 22-08 for the Purchase of Furniture and Installation Services in an Amount Not-to-Exceed \$848,500 to be Paid from 2018 Bond Funds

Don Gartman moved the Board of Trustees approve award of contract 22-08 for the purchase of furniture and installation services in an amount not-to-exceed \$848,500 to be paid from 2018 Bond funds. Verna Henson seconded the motion; all voted in approval.

Consideration of and Possible Action to Award Contract 22-09 for the Purchase of Customized Instrumentation and Equipment in an Amount Not-to-Exceed \$1,984,600 to be Paid from the TRUE Grant and 2018 Bond Funds

Don Gartman moved the Board of Trustees approve award of contract 22-09 for the purchase of customized instrumentation and equipment in an amount not-to-exceed \$1,984,600 to be paid from the TRUE Grant and 2018 Bond funds. Kyle Dickson seconded the motion; all voted in approval.

Consideration of and Possible Action to Award Contract 22-10 for the Purchase of Virtual/Online Instructional Software Modules for a Not-to-Exceed Amount of \$396,636.46

Melissa Skipworth moved the Board of Trustees approve award of contract 22-10 for the purchase of virtual/online instructional software modules for a not-to-exceed amount of \$396,636.46. Verna Henson seconded the motion; all voted in approval.

Consideration of and Possible Award of Contract 22-11 for the Purchase of Butcher Block Tables and Installation Services in an Amount Not-to-Exceed \$110,775 to be Paid from 2018 Bond Funds

Don Gartman moved the Board of Trustees approve award of contract 22-11 for the purchase of butcher block tables and installation services in an amount not-to-exceed \$110,775 to be paid from 2018 Bond funds. Melissa Skipworth seconded the motion; all voted in approval.

Consideration of and Action to Approve Contract 21-16 Guaranteed Maximum Price (GMP) as Proposed by Austin Commercial for Design and Construction Services for the Glycol Separation Unit (GSU) System to be Constructed Inside of the COM Industrial Careers Building in an Amount Not-to-Exceed \$2,018,537 to be Paid from 2018 Bond Funds and Supplemental College Funds

Don Gartman moved the Board of Trustees approve contract 21-16 Guaranteed Maximum Price (GMP) as proposed by Austin Commercial for design and construction services for the Glycol Separation Unit (GSU) system to be constructed inside of the COM Industrial Careers Building in the amount not-to-exceed \$2,018,537 to be paid from 2018 Bond funds and supplemental college funds. Kyle Dickson seconded the motion; all voted in approval.

Financial Report(s)

Consideration of and Possible Acceptance of the October 2021 Investment and Financial Reports

Kyle Dickson moved the Board of Trustees accept the October 2021 Investment and Financial Reports. Verna Henson seconded the motion; all voted in approval.

Consideration of and Possible Acceptance of the November 2021 Investment Report and the November 2021 Quarterly Report

Verna Henson moved the Board of Trustees accept the November 2021 Investment Report and the November 2021 Quarterly Report. Melissa Skipworth seconded the motion; all voted in approval.

Board Report

Police Department Open House, Thursday, 1:00 p.m.
Nursing, Fire & Police graduations this week.

President's Report

Updates

Insurance Update was provided.
Enrollment Update – Dr. Helen Brewer reviewed today's enrollment update.
COM Gym Update – There are several leaks; we will need to replace the roof on the gym.

Reminders/Announcements

Fall Graduation, Saturday, December 11th; **this event will now be held virtually.**
January BOT – Monday, January 24, 2022, 1:30 p.m.

Resignations and Retirements Report– report attached in BOT packet.

Executive Session 3:27 p.m.

Melissa Skipworth read the paragraph allowing the Board to retire to executive session.

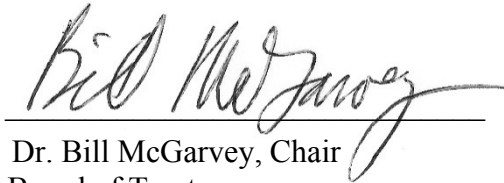
Open Session 4:52 p.m.

Upon reconvening, Kyle Dickson moved to approve Amendment #2 of Dr. Nichols' contract. Dawn King seconded the motion; all voted in approval.

Adjournment at 4:53 p.m.

A handwritten signature in blue ink, reading "Melissa Skipworth", written over a horizontal line.

Melissa Skipworth, Secretary
Board of Trustees

A handwritten signature in blue ink, reading "Dr. Bill McGarvey", written over a horizontal line.

Dr. Bill McGarvey, Chair
Board of Trustees

Comments from the Community

A citizen desiring to appear before the Board of Trustees shall complete a Public Comment Request Form indicating the topic about which they wish to speak which shall be filed with the Board Clerk ten (10) minutes prior to the start of the meeting. Time allotted each citizen or organization shall be limited to five minutes. The total time for hearing of citizens shall be no more than 60 minutes at any one meeting. Presentation of matters concerning a complaint or charge against a College District employee or officer will be heard in closed session unless the individual who is the subject of the charge or complaint requests a public hearing.

We appreciate your concerns. If the matter(s) you raise are not included on the board agenda, state law, specifically the Texas Open Meetings Act, prohibits the Board from discussing, commenting on or taking action on these issues at this board meeting. Thank you.



PRESIDENT'S OFFICE

Constituents Leader Activity Reports

A. Faculty Senate – Dr. Elaine Childs



PRESIDENT'S OFFICE

MINUTE ORDER

To: Board of Trustees

From: Dr. Warren Nichols, President

Date: January 11, 2022

Subject: Institutional Advancement

MINUTE ORDER

Motion to be acted upon: "I move the Board of Trustees Accept the report from Institutional Advancement for FY2021."

PURPOSE

To provide the Board of Trustees with information regarding progress made and funds raised in FY2021.

BACKGROUND

Over the last few years, Institutional Advancement has reported progress of the department and funds raised over the fiscal year in collaboration with on- and off-campus partners.

FY2021 included more than \$13 million for the College, students, and as a minority serving institution from CARES Act (emergency aid) funding because of the pandemic.

IMPLICATIONS

Financial: N/A

Strategic Goal: N/A

Human Resources: N/A

Attachments: Presentation
Handouts (Student Scholarship Stories)



Institutional Advancement Report

FY2021	
Type	Amount
Gifts	\$ 2,244,185.00
Pledges	\$ 681,592.00
State Grants	\$ 1,235,897.00
Federal (HEERF/CARES Act)	\$ 13,477,291.00
Federal Grants (Award)	<u>\$ 7,707,566.00</u>
Subtotal	\$ 25,346,531.00
Federal Grants (Managed)	<u>\$ 5,229,728.00</u>
Subtotal	\$ 5,229,728.00
TOTAL	\$ 30,576,259.00

Student Support in FY2021

Scholarships	Number	Amount
Foundation Scholarships	515	\$317,647
Hurricane Harvey Scholarships	61	\$96,773
Promise Scholarships	48	\$59,261
CARES Act (HEERF) Aid	<u>857</u>	<u>\$746,325</u>
Total	1,481	\$1,220,006
No. of Foundation Scholarship Applications Processed	1,800	
No. of CARES Act Applications Processed	1,477	

Institutional Advancement in FY22

- Funds raised from September 1 through January 10
- Foundation Scholarships to date
- Promise Challenge
- Campaign – Quiet Phase Kickoff

Questions

Questions?

If you haven't made a gift this year to the COM Foundation, please consider doing so. It really makes a difference to our students!

409-933-8674

lwatson5@com.edu

<https://www.com.edu/giving/>

Willie E. Bird, Jr. Memorial Law Enforcement Scholarship



What are your academic and career goals?

My educational goal is to study at COM to get my associates of arts. After those two years, I will transfer to Sam Houston State University for my bachelors degree. Criminal Justice was my dream job when I was a little boy.

Dear Mr. and Mrs. Bird,

I'm writing to thank you for the generous Willie E Bird, Jr. Memorial Law Enforcement Scholarship. I am very appreciative and honored to be selected for this amazing scholarship.

I promise you I will work hard and demonstrate my effort; I will not disappoint. I will make sure to make everyone proud who were involved on this. This opportunity really opened my eyes and showed me I am going in the right direction. From the bottom of my heart, thank you for this amazing opportunity.

Sincerely,

Osvaldo Rodriguez

Latinas Adelante Scholarship



My name is Emily Escobar. I wanted to thank you all for your impact not only on my life but the life of various college students here at the College of the Mainland. I am a part of COM's Collegiate High School Program; this program has impacted my life significantly. It has granted me the honor to become a first-generation college graduate. This upcoming spring, I plan to walk across the stage and receive my high school and college diplomas. I will be attending the University of Texas at Austin next fall as a third-year student. I have been able to jump start my college and physical therapy journey but without the help of generous donors I would not have been able to come this far. This fall semester I received the Latinas Adelante's Scholarship. Receiving any scholarship is an honor but receiving a scholarship that upholds the value of being a Latina is a huge honor.

Latinas Adelante Scholarship

My parents are from a small country in Central America named El Salvador. They made the biggest sacrifice of their lives to come to the United States to have a more stable and safer life. My father had to stop attending school when he was in 3rd grade to help his family survive. My mother stopped attending school in 5th grade due to a lack of financial stability. I have seen my parents lose opportunities because of their lack of being able to speak English or because they cannot use a computer. I have seen them work hard every single day of my life. They have shown me what is to prosper. Being able to receive an education is a privilege. Being able to afford an education is also a privilege. Now why have I talked about my parents so much?

Well, the reason is because generous donors like you have helped my family and many others end the generational curse of not receiving an education. Many of you have contributed to an individual or individuals' future. Because of you, someone like me can become a first-generation college student. Your impact on the College of the Mainland and its students is one that no words can show enough appreciation for. Thank you for your selflessness, support, and faith in us students. Thank you for hearing our stories and choosing to believe in us. On behalf of the scholarship recipients here at College of the Mainland, thank you. !

Willie E. Bird, Jr. Memorial Law Enforcement Scholarship



What are your academic and career goals?

My educational goal is to study at COM to get my associates of arts. After those two years, I will transfer to Sam Houston State University for my bachelors degree. Criminal Justice was my dream job when I was a little boy.

Dear Mr. and Mrs. Bird,

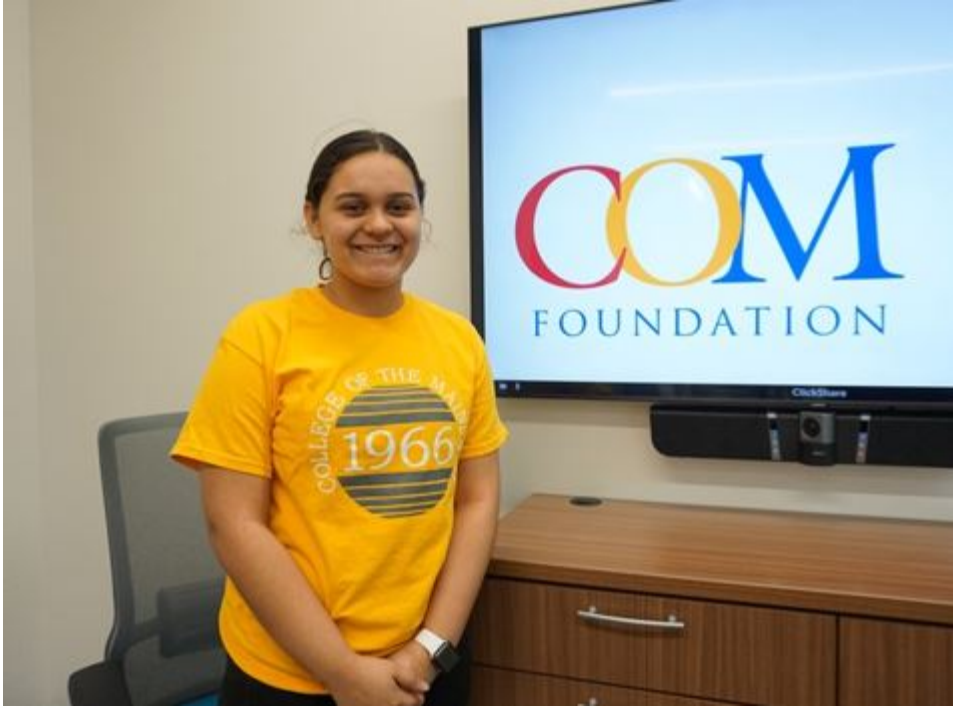
I'm writing to thank you for the generous Willie E Bird, Jr. Memorial Law Enforcement Scholarship. I am very appreciative and honored to be selected for this amazing scholarship.

I promise you I will work hard and demonstrate my effort; I will not disappoint. I will make sure to make everyone proud who were involved on this. This opportunity really opened my eyes and showed me I am going in the right direction. From the bottom of my heart, thank you for this amazing opportunity.

Sincerely,

Osvaldo Rodriguez

Latinas Adelante Scholarship



My name is Emily Escobar. I wanted to thank you all for your impact not only on my life but the life of various college students here at the College of the Mainland. I am a part of COM's Collegiate High School Program; this program has impacted my life significantly. It has granted me the honor to become a first-generation college graduate. This upcoming spring, I plan to walk across the stage and receive my high school and college diplomas. I will be attending the University of Texas at Austin next fall as a third-year student. I have been able to jump start my college and physical therapy journey but without the help of generous donors I would not have been able to come this far. This fall semester I received the Latinas Adelante's Scholarship. Receiving any scholarship is an honor but receiving a scholarship that upholds the value of being a Latina is a huge honor.

Latinas Adelante Scholarship

My parents are from a small country in Central America named El Salvador. They made the biggest sacrifice of their lives to come to the United States to have a more stable and safer life. My father had to stop attending school when he was in 3rd grade to help his family survive. My mother stopped attending school in 5th grade due to a lack of financial stability. I have seen my parents lose opportunities because of their lack of being able to speak English or because they cannot use a computer. I have seen them work hard every single day of my life. They have shown me what is to prosper. Being able to receive an education is a privilege. Being able to afford an education is also a privilege. Now why have I talked about my parents so much?

Well, the reason is because generous donors like you have helped my family and many others end the generational curse of not receiving an education. Many of you have contributed to an individual or individuals' future. Because of you, someone like me can become a first-generation college student. Your impact on the College of the Mainland and its students is one that no words can show enough appreciation for. Thank you for your selflessness, support, and faith in us students. Thank you for hearing our stories and choosing to believe in us. On behalf of the scholarship recipients here at College of the Mainland, thank you. !

Foundation	Applied	Declined	Awarded	Amount	Award Percentage	Award Average
FY2021	1170	594	576	\$414,420	49.23%	\$719
FY2022 - Fall 2021/Spring 2022 ²	1800	1340	460	\$471,998	25.56%	\$1,026
*Includes Harvey Emergency Aid						
CARES EA	Applied	Declined	Awarded	Amount	Award Percentage	Award Average
FY2021	1477	620	857	\$746,325	58.02%	\$871
Summer 2021	574	196	378	\$258,221	65.85%	\$683
Totals	2051	816	1235	\$1,004,546	60.21%	\$813
FY2022 -						
Fall 2021/PY Pell 859- 20%	2302	874	1428	\$1,377,775	62.03%	\$965
Spring 2022/PY Pell 785- 20%	1922	378	1544	\$1,623,900	80.33%	\$1,052
Totals	4224	1252	2972	\$3,001,675	70.36%	\$1,010



MINUTE ORDER

To: Board of Trustees

From: Dr. Warren Nichols, President

Date: January 24, 2022

Subject: Recommendation – Acceptance of Non-Contractual Positions Hiring Report

Presented for recommended acceptance to Board of Trustees on January 24, 2022.

MINUTE ORDER

Motion to be acted upon: “I move the Board of Trustees accept the *Non-Contractual Positions Hiring Report* as written.”

PURPOSE

The *Non-Contractual Positions Hiring Report* is being presented to the Board of Trustees for review and acceptance.

BACKGROUND

Notwithstanding Board policy DC (Local) which states that the Board delegates to the College President final authority to employ and dismiss non-contractual classified employees on an at-will basis, based on recommendations from the staff the persons listed on the attached Non-Contractual Positions Hiring Report is recommended for employment.

IMPLICATIONS

Financial:

Adult Education Program Coordinator I - \$52,715 from budget 32-0-4850-1401-5140

Student Life Specialist I - \$36,383 from budget 11-0-0000-4115-5160

STEM Success Coach - \$50,873 from budget 32-0-5185-4199-5140

Assistant Professor – Psychology - \$54,340 from budget 11-0-0000-1129-5100

Strategic Goal #5: College of the Mainland will provide services/processes that enhance the integrity/safety/quality of the institution (including physical facilities) and that enhance the quality of the faculty and staff.

Attachments

Non-contractual Positions Hiring Report

	POSITION	DEPARTMENT	CLASS SUMMARY	POSITION STATUS	SELECTED CANDIDATE	SALARY	SALARY RANGE
1	Adult Education Progrtman Coordinator I	Adult Education	Develops, coordinates, and implements relevant Adult Education program requirements; Create, provide, and offer pathways for Adult Education students into college based vocational/degree plans. Interpret, monitor and report students' progress in meeting their academic/career goals as outlined in the Adult Education's strategic plan.	Replacement for Cynthia McConnell, who retired. This is a grant-funded position.	Alvin Le Blanc	\$52,715	\$42,172 - \$52,715 - \$63,258
2	Student Life Specialist I	Student Life	The Student Life Specialist I will focus on student-centered activities that encourage engagement, involvement, and leadership. These include, but are not limited to, New Student Orientations, Safe Colleges Training, Rec-Sports, annual student-centered events, and collaborations with other departments, all which support the mission of the Student Life Department and the College.	Replacement for Kari Starz who was promoted.	Elizabeth Urban	\$36,383	\$34,853 - \$43,566 - \$52,280
3	STEM Success Coach	STEM/Arts & Humanities	The Science Department is seeking a STEM Success Coach to work closely with College of the Mainland students and faculty toward growing enrollment and student success in the STEM fields. The successful candidate will develop community and industry partners, assist STEM students in the selection of coursework and academic programs to empower long-term career planning and goals, provide support in assessing student needs and abilities, stay current in the STEM educational landscape and serve as an effective liaison between students, faculty and the community. The position will require remaining current with program changes and educational innovations in the STEM fields, with an emphasis in Engineering.	Replacement of Eliseo Herrera, who resigned. (Grant Funded Position)	Lauren Nolte	\$50,873	\$46,389 - \$57,987 - \$69,584
4	Assistant Professor of Psychology	Social and Behavioral Sciences	Prepare, develop, revise curriculum and course work. Provide scheduled office hours for student consultation. Serves on College committees as needed and assigned.	FT Temporary Faculty for Spring 2022	Jennifer Abshire	\$54,340	\$43,040 - \$55,951 - \$68,860
5							
6							



PRESIDENT'S OFFICE

MINUTE ORDER

To: Board of Trustees
From: Dr. Warren Nichols, President
Date: January 24, 2022
Subject: Recommendation – Director of Nursing (Replacement)

Presented for recommended approval to the Board of Trustees on January 24, 2022 and forwarded for recommended approval to Board of Trustees on the same date.

MINUTE ORDER

Motion to be acted upon: “I move the Board of Trustees approve the appointment of Debra Bauer to the position of Director of Nursing, Nursing Department.”

PURPOSE

Responsible for directing and supervising all operations related to the Nursing program.

BACKGROUND

This position is replacing Amanda Ordonez who resigned September 2021.

IMPLICATIONS

Financial: \$133,421 from budget 11-0-0000-3104-5140.

Strategic Goal 5: College of the Mainland will provide services/processes that enhance the integrity/safety/quality of the institution (including physical facilities) and that enhance the quality of the faculty and staff.

ATTACHMENTS

1. Appointment Nomination



PRESIDENT'S OFFICE

MEMORANDUM

To: Board of Trustees

From: Dr. Warren Nichols, President

Date: January 24, 2022

Subject: TASB Legal Policy Update 42

Included for review and information are TASB issued updates to legal policies related to Business and Support Services and Personnel.

ATTACHMENT

- 1) TASB Update 42 – *Business and Support Services and Personnel* legal policies

Explanatory Notes

Community College Policy Reference Manual Update 42

Community College Policy Reference Manual

CAAB(LEGAL)

STATE AND FEDERAL REVENUE SOURCES: FEDERAL

At U.S. Department of Labor, a federal rule update has been reflected in this legally referenced policy.

CAD(LEGAL)

APPROPRIATIONS AND REVENUE SOURCES: BOND ISSUES

At Posting Notice of Election, this legally referenced policy has been amended to conform with statute.

CAI(LEGAL)

APPROPRIATIONS AND REVENUE SOURCES: AD VALOREM TAXES

SB 1438 amends the authority for a college district to adopt a tax rate that exceeds the voter-approved tax rate without an election if increased expenditures are necessary to respond to a disaster that has affected the college district and the governor has declared any part of the area in which the college district is located as a disaster area. Because of these changes, some information from Election to Approve Increase was moved to the new Exception margin note.

CAIA(LEGAL)

AD VALOREM TAXES: EXEMPTIONS AND PAYMENTS

SB 742 covers tax installment plans for both damaged and undamaged property in a disaster and Additional Penalties.

Language at Goods-in-Transit has been amended to conform to TASB style and at Exception to conform to the statute. Also, language regarding Partial Payments has been moved for clarity.

The following changes take effect on January 1, 2022:

- At Total Appraised Value, SB 794 entitles certain disabled veterans to a homestead exemption.
- SB 1438 repeals Texas Tax Code Section 11.35(c), which prohibits a person from claiming a temporary tax exemption for a property damaged in a declared disaster during the tax year the disaster was declared unless the governing body of the taxing unit adopts the exemption and repeals related sections.
- At Extension for Property in Disaster Area, HB 988 provides a date extension for the tax exemption for goods-in-transit.

CAID(LEGAL)

AD VALOREM TAXES: APPRAISAL DISTRICT

SB 63 prohibits an individual from serving on an appraisal district board of directors if the individual has Prior Service or Involvement with Appraisals. Also, at Appraisal District Employment Restriction, an individual is prohibited from being employed by the district if the individual has served as a member of the ARB for an appraisal district at any time during the preceding two years.

At Prohibited Communications, **HB** 988 prohibits a college district board member, officer, or employee from communicating with the chief appraiser or an appraisal district employee to influence a property's appraisal value unless the individual owns or leases the property.

At Appraisal Review Boards, HB 2941 shifts the power to appoint and remove ARB members in all counties from the appraisal district to the local administrative judge.

CAO(LEGAL)

APPROPRIATIONS AND REVENUE SOURCES: PUBLIC FACILITIES CORPORATIONS

SB 1942 provides that a public facility corporation created under Local Government Code Chapter 303 must retain its Status as a Public Facility Corporation.

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CDA(LEGAL)

ACCOUNTING: FINANCIAL REPORTS AND STATEMENTS

At Financial Reports, the citation has been updated to reflect SB 1.

CDC(LEGAL)

ACCOUNTING: AUDITS

This legally referenced policy has been updated with a link to the 2021 fiscal year Texas Higher Education Coordinating Board publication [Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, Fiscal Year 2021](#).

CF(LEGAL)

PURCHASING AND ACQUISITION

At Companies that Boycott Israel, clarifying language has been added and the citation has been updated.

At Companies that Boycott Energy Companies, SB 13 prohibits a college district from contracting with a company for goods or services unless the contract contains a written verification from the company that it does not boycott energy companies and will not during the term of the contract.

At Companies that Discriminate Against a Firearm Entity or Firearm Trade Association, SB 19 prohibits a college district from contracting with a company for the purchase of goods or services unless the contract contains a written verification from the company that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against an entity or association during the term of the contract.

At Contracts with Foreign-Owned Companies, SB 2116 prohibits a college district from entering into an agreement relating to critical infrastructure in Texas with a company if the company would be granted direct or remote access to or control of the critical infrastructure, unless the access is allowed for product warranty and support services.

HB 3774 adds forensic science performed by a forensic analyst or forensic science expert to the list of services that may be procured under Professional Services.

SB 799 provides a procurement method for Certain Medical Services. Also, the contract notification threshold and amount of time required to report to the LBB for certain professional services has been increased. Additionally, Contract-Related Fee Report requirements have been amended.

HB 1428 expands the Exceptions applicable to delinquent taxes to apply to a contingent fee contract for the collection of any obligation.

SB 475 requires college districts to follow certain contracting procedures related to Cloud Computing Services. In addition, at Data Security Controls for Vendors, certain contracted vendors must meet the college district's security controls and periodically provide evidence that they meet the security controls.

At Recycled Products, language has been amended to match new Texas Commission on Environmental Quality (TCEQ) regulations.

CFF(LEGAL)

PURCHASING AND ACQUISITION: PAYMENT PROCEDURES

HB 1476 addresses notices to a vendor of an error in an invoice related to a Disputed Payment.

CFG(LEGAL)

PURCHASING AND ACQUISITION: REAL PROPERTY AND IMPROVEMENTS

At Eminent Domain, a citation and clarifying language have been added.

Additional amendments are to conform to TASS style.

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CFH(LEGAL)

PURCHASING AND ACQUISITION: FINANCING PERSONAL PROPERTY PURCHASES

SB 58 amends the definition of Personal Property to include cloud computing services.

Additional amendments are to conform with TASS style.

CGA(LEGAL)

SAFETY PROGRAM: INSPECTIONS

Citations in this legally referenced policy have been updated to reflect the repeal and replacement of Administrative Code provisions addressing Asbestos-Related Activity.

CGC(LEGAL)

SAFETY PROGRAM: EMERGENCY PLANS AND ALERTS

HB 3597 provides that a document related to a community college's multihazard EOP is subject to Public Disclosure if it enables an individual to verify that the plan addresses the five stages of emergency management instead of just four.

CGE(LEGAL)

SAFETY PROGRAM: MEDICAL TREATMENT

SB 199 requires a college district that owns or leases an Automated External Defibrillator (AED) to inspect it monthly to verify it is placed in its designated location, reasonably appears ready for use, and does not reasonably appear damaged in a manner that would prevent operation.

Additional amendments are to conform with TASS style.

CH(LEGAL)

SITE MANAGEMENT

At Energy or Water Conservation Measures, HB 3583 amends the definition of energy savings performance contract into which a college district may enter.

TCEQ's regulations on the Recycling Program have been updated.

HB 2205 states that Pools or spas that comply with state law on August 31, 2021, may continue to be used, maintained, and repaired in accordance with state law in effect on that date.

SB 1831 requires posting of Human Trafficking Signs at Cosmetology Facilities.

At Display of National Motto, SB 797 requires a college district to display in a conspicuous place in each of its buildings a durable poster or framed copy that includes only the national motto "In God We Trust," the U.S. flag centered under the motto, and a representation of the Texas flag. The requirement only applies if it is either donated for display or purchased from private donations and made available to the institution.

CHA(LEGAL)

SITE MANAGEMENT: SECURITY

At Duty to Request and Render Aid, SB 2212 requires a college district police officer who encounters an injured person while on duty to immediately request EMS personnel and, while waiting for EMS personnel to arrive, provide the person treatment to the extent of the officer's skill under certain circumstances.

SB 69 provides that a college district police officer has a duty to stop or prevent another officer from using Excessive Force against a suspect under certain circumstances. College district police officers are also prohibited from intentionally using certain types of force.

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HB 929 requires that a college district police department's policy regarding Body-Worn Cameras include certain provisions regarding the use of those cameras and collection and storage of footage.

At Personal Cameras, HB 1938 permits a college district police department that employs body-worn cameras to apply to the governor's office for a grant to defray data storage costs for body-worn camera recordings.

At Use of Drones, HB 1758 requires each college district police department that uses or intends to use a drone to adopt a written policy on use of force by a drone and submit the policy to TCOLE by January 1st each even-numbered year.

At Custodial Interrogations, HB 375 expands Texas Penal Code Section 21.02 addressing continuous sexual abuse of a young child to also apply to continuous sexual abuse of a disabled individual.

SB 741 and HB 781 authorize college district School Marshals to carry a handgun and store it in a secure location. Marshals are not required to store the handgun in a locked container.

Additional amendments are to conform with TASB style.

CHC(LEGAL)

SITE MANAGEMENT: TRAFFIC AND PARKING CONTROLS

Effective January 1, 2022, SB 792 amends provisions related to Parking Privileges of Disabled Veterans. Additional amendments are to conform to TASB style.

Additional amendments are to conform with TASB style.

CHF(LEGAL)

SITE MANAGEMENT: WEAPONS

This legally referenced policy has been updated to reflect HB 1927, which allows permitless carry of handguns with certain exceptions. The bill repeals Texas Government Code Section 46.035, which addresses carry by a handgun license holder and moves its provisions to other statutes. Though some of the transferred provisions have been modified, provisions addressing open carry by license holders at institutions of higher education have been moved with only the addition of provisions addressing carry as a participant in historical reenactments. Provisions in law addressing concealed carry specific to college districts as educational institutions or institutions of higher education remain unchanged.

The bill also modifies references throughout the law to a shoulder or belt holster to refer to any holster (similar provisions can be found in HB 2112 and SB 550). Other changes from this bill include:

- The prohibition on carry by Persons Under 21 or Who Committed Certain Felonies with limited exceptions;
- Amendments to provisions addressing carry at Board Meetings and the expansion of the applicable exceptions; and
- New Notice provisions under Penal Code 46.03 and 30.05.

HB 957 removes firearm silencers from the list of Prohibited Weapons in Texas Penal Code Section 46.05. The bill provides that an offense committed under Section 46.05 involving firearm silencers that occurs before the bill's effective date may not be prosecuted after that date.

At Exceptions, HB 1069 authorizes city or county first responders to carry a concealed or holstered handgun while on duty.

Beginning January 1, 2022, HB 1407 permits Open Carry by a handgun license holder if the license holder and handgun are in a motor vehicle and the handgun is in a holster.

Additional amendments are to conform with statute and TASB style.

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CJ(LEGAL) TRANSPORTATION MANAGEMENT

SB 1064 deleted language regarding the registration of government-owned vehicles.

SB 1831 amends existing law requiring the posting of Human Trafficking Signs at Buses and Bus Stops. A citation to a new attorney general rule has also been added.

Additional amendments are to conform to TASB style.

CK(LEGAL) INSURANCE AND ANNUITIES MANAGEMENT

At Designated Broker of Record, a citation to an attorney general opinion has been clarified. Also, at Disclosure of Interested Parties, a cross reference has been updated.

An additional amendment is to update a cross reference.

CKB(LEGAL) INSURANCE AND ANNUITIES MANAGEMENT: LIABILITY INSURANCE

SB 282 prohibits a college district from using public funds to pay Sexual Harassment Claims made against a member of the governing body, an officer, or an employee.

Also, a citation has been updated at Liability Insurance based on the attorney general's redesignation of the cited opinion number.

CM(LEGAL) FACILITIES CONSTRUCTION

Revisions have been made throughout this policy to reflect statutory changes from HB 2581:

- At Publishing Criteria, a college district is required, for certain construction contracts, to publish in its request for proposals or qualifications a detailed methodology for scoring each criterion used.
- At Disclosure to Offeror upon Request, a person who submits a bid, proposal, or response to a request for qualifications for a construction contract is permitted to make a written request after the contract is awarded to the governmental entity for documents related to the evaluation of the offeror's submission.
- At Enforcement Actions, the deadline is extended for a person to file an action for declaratory or injunctive relief from ten days to 15 calendar days after the contract is awarded.

At Companies that Boycott Israel, clarifying language has been added and the citation has been updated.

At Companies that Boycott Energy Companies, SB 13 prohibits a college district from contracting with a company for goods or services unless the contract contains a written verification from the company that it does not boycott energy companies and will not during the term of the contract.

At Companies that Discriminate Against a Firearm Entity or Firearm Trade Association, SB 19 prohibits a college district from contracting with a company for the purchase of goods or services unless the contract contains a written verification from the company that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and will not discriminate against an entity or association during the term of the contract.

At Contracts with Foreign-Owned Companies, SB 2116 prohibits a college district from entering into an agreement relating to critical infrastructure in Texas with a company if the company would be granted direct or remote access to or control of the critical infrastructure, unless the access is allowed for product warranty and support services.

A citation has been updated at Registered Engineer based on the Attorney General's redesignation of the cited opinion number.

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HB 3774 adds forensic science performed by a forensic analyst or forensic science expert to the list of services used when Procuring Professional Services.

SB 799 provides a procurement method for Certain Medical Services. Also, the contract notification threshold and amount of time required to report to the LBB for certain professional services has been increased.

HB 1477 requires Payment and Performance Bonds when authorizing a nongovernmental entity leasing public property from a college district to enter into a public work contract with a prime contractor, depending on the amount of the contract.

CMB(LEGAL) FACILITIES CONSTRUCTION: COMPETITIVE SEALED PROPOSALS

HB 2581 requires that, for a competitive sealed proposal for Civil Works Projects, a college district must assign a weighted value to price in a specified manner and following certain provisions, and must Make Evaluations Public, including scores, within seven days after the contract is awarded. A citation at Request for Proposals has been updated in response to the bill.

Citations of Opening Proposals and Selection have been updated for clarity.

CR(LEGAL) TECHNOLOGY RESOURCES

HB 20 makes Impeding Electronic Mail Prohibited for email service providers.

FAA rules related to registration, airman certification, and operation have been adjusted to include the eligibility of a civil Small Unmanned Aircraft System to operate over human beings.

CRA(LEGAL) TECHNOLOGY RESOURCES: WEBSITE POSTINGS

HB 1154 redesignated several statutes, resulting in citation changes.

SB 1677 repealed Required Internet Postings regarding employee compensation information.

The Coordinating Board amended a regulation setting an August 1 deadline for Required Internet Postings regarding course sequences.

Additional amendments are for clarification and to conform to TASB style.

CS(LEGAL) INFORMATION SECURITY

Amendments are made throughout to conform to TASB style.

At the Note at the end of the policy, a cross reference has been added to CF(LEGAL) for vendor contracting requirements related to information security from SB 475.

DAA(LEGAL) EMPLOYMENT OBJECTIVES: EQUAL EMPLOYMENT OPPORTUNITY

SB 45 provides that a college district commits an unlawful employment practice if an employee is a victim of Sexual Harassment, as defined by the bill, and the employer or the employer's supervisors or agents know or should have known about the conduct but fail to take immediate and appropriate corrective action.

At Access for Religious Organizations During Disasters, HB 525 provides that a religious organization's religious and other related activities are essential activities, including during a declared state of disaster. A college district may not prohibit a religious organization from engaging in activities or discharging its faith-based mission and purpose at any time.

Additional amendments are to conform to TASB style.

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DC(LEGAL) EMPLOYMENT PRACTICES

At Pre-Employment Inquiry for Peace Officers and Telecommunications Officers, SB 24 requires a college district police department intending to hire a police or telecommunications officer to first obtain certain background information and records and provide confirmation to TCOLE that all applicable steps have been completed. These provisions apply to officers hired on or after January 1, 2022.

Additional amendments are to conform to TASB style.

DEA(LEGAL) COMPENSATION AND BENEFITS: SALARIES AND WAGES

SB 1677 repeals the requirement that a college district post on its website Information Regarding Staff Compensation.

Additional amendments are to conform to TASB style.

DEC(LEGAL) COMPENSATION AND BENEFITS: LEAVES AND ABSENCES

SB 1359 requires a law enforcement agency to adopt a policy permitting its officers who experience a traumatic event in the scope of employment to take Mental Health Leave.

Under HB 2073, the college district board of trustees must adopt a Paid Quarantine Leave policy for college district peace officers and emergency medical technicians who are required to quarantine or isolate in response to a possible or known exposure to a communicable disease while on duty.

DECB(LEGAL) LEAVES AND ABSENCES: MILITARY LEAVE

This legally referenced policy has been updated to reflect amendments to federal statute, including the expansion of the definition of "service in the uniformed services" and the addition of the definition of "state active duty," as those terms relate to Federal Military Leave-Reemployment.

Also, at Paid Leave of Absence, HB 1589 entitles an eligible college district employee to up to seven additional days of paid leave per year if the employee is on active military duty during a disaster.

DGC(LEGAL) EMPLOYEE RIGHTS AND PRIVILEGES: EMPLOYEE EXPRESSION AND USE OF COLLEGE FACILITIES

A cross reference has been added in the Note for further information relevant to employee expression and facilities use.

HB 1239 prohibits a college district or public official from issuing an order that closes or has the effect of closing Places of Worship.

Additional amendments are to conform to TASB style.

DHB(LEGAL) EMPLOYEE STANDARDS OF CONDUCT: SEARCHES AND ALCOHOL/DRUG TESTING

At Prohibition, this legally referenced policy reflects amendments to a federal rule language clarifying that a college district may not permit certain current and prospective employee-drivers to perform a safety-sensitive function based on the results of a drug and alcohol clearinghouse query.

A citation at Searches- General Rule has also been updated.

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DHC(LEGAL)

EMPLOYEE STANDARDS OF CONDUCT: CHILD ABUSE AND NEGLECT REPORTING

At Reporting Abuse and Neglect, HB 3379 requires a college district employee to report child abuse and neglect if the person has reasonable cause to believe child abuse or neglect has occurred or may occur. Prior law only required cause; therefore, the policy now reflects a heightened reporting threshold.

DIAA(LEGAL)

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION: SEX AND SEXUAL VIOLENCE

At Campus Peace Officers, SB 1371 resolves a conflict in statute, clarifying that a college district peace officer may only include the type of incident in a report of sexual harassment, sexual assault, dating violence, or stalking submitted by the officer to the Title IX coordinator if the victim completes a pseudonym form and may not reveal the victim's identifying information.

DJ(LEGAL)

ASSIGNMENT, WORK LOAD, AND SCHEDULES

SB 1677 repeals the requirement that a college district include its established faculty academic workload rules and regulations in its operating budget.

DK(LEGAL)

PROFESSIONAL DEVELOPMENT

HB 1118 amends the Cybersecurity Training requirement to except college district employees on certain types of leave or alternative work authorization.

Additional amendments are to conform with statute.

Perkins Grants

Except as provided in 20 U.S.C. 2352(b) and (c) and 20 U.S.C. 2353, each eligible agency, including the Coordinating Board, shall distribute the portion of the funds made available under 20 U.S.C. 2322(a)(1) to carry out 20 U.S.C. 2352 for any fiscal year to eligible institutions or consortia of eligible institutions within the state.

Each eligible institution or consortium of eligible institutions shall be allocated an amount that bears the same relationship to the portion of funds made available under 20 U.S.C. 2322(a)(1) to carry out 20 U.S.C. 2352 for any fiscal year as the sum of the number of individuals who are Federal Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs meeting the requirements of 20 U.S.C. 2355 offered by such institution or consortium in the preceding fiscal year bears to the sum of the number of such recipients enrolled in such programs within the state for such year.

20 U.S.C. 2352(a)(1)–(2)

**Retirement
Contributions**

If an employer, including a college district, applies for money provided by the United States or an agency of the United States and if any of the money will pay part or all of any employee's salary, the employer shall apply for any legally available money to pay state contributions required by Government Code 825.404 or 830.201 in accordance with Government Code 825.406.

An employer who fails to comply with Government Code 825.406 may not, after the failure, apply for or spend any money from a federal or private grant. The attorney general shall bring a writ of mandamus against the employer to compel compliance.

A person commits an offense if the person is an administrator of an employer and knowingly fails to comply with Government Code 825.406.

Gov't Code 825.406 [See CAM]

**Requests for Federal
Financial Assistance**

The governing body of a local government, including a college district, by order or resolution may request that the governor or the designated state agency act on behalf of the local government in any matter relating to:

1. A request for federal financial assistance; or
2. An agreement, assurance of compliance, requirement, or enforcement action relating to the request.

Gov't Code 742.004

A governing body of a local government that has requested that the governor or the designated state agency act on behalf of the local

government under Government Code 742.004(a) shall submit to the governor or the designated state agency each application for federal financial assistance. The governor or the designated state agency shall approve or disapprove the application.

The governing body of a local government by order or resolution may revoke the request and the authority delegated by the request to the governor or designated state agency.

Gov't Code 742.005

**Administration of
Federal Awards**

The U.S. Office of Management and Budget (OMB), in 2 C.F.R. Part 200, establishes uniform administrative requirements, cost principles, and audit requirements for federal awards to non-federal entities, as described in 2 C.F.R. 200.101. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in 2 C.F.R. 200.102 and 200.211, or unless specifically required by federal statute, regulation, or Executive Order. 2 C.F.R. 200.100(a)(1)

The non-federal entity is responsible for complying with all requirements of the federal award. For all federal awards, this includes the provisions of the Federal Funding Accountability and Transparency Act (FFATA), which includes requirements on executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 and 2 C.F.R. Part 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310. 2 C.F.R. 200.300(b)

“Non-federal entity” (NFE) means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient. 2 C.F.R. 200.1

**Financial
Management**

Each state must expend and account for the federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-federal entity'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.

The financial management system of each non-federal entity must provide for the following (see also 2 C.F.R. 200.334, 200.335, 200.336, and 200.337):

1. Identification, in its accounts, of all federal awards received and expended and the federal programs under which they were received. Federal program and federal award identification must include, as applicable, the Assistance Listings title and number, federal award identification number and year, name of the federal agency, and name of the pass-through entity, if any.
2. Accurate, current, and complete disclosure of the financial results of each federal award or program in accordance with the reporting requirements set forth in 2 C.F.R. 200.328 and 200.329. If a federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.
3. Records that identify adequately the source and application of funds for federally funded activities. These records must contain information pertaining to federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income, and interest and be supported by source documentation.
4. Effective control over, and accountability for, all funds, property, and other assets. The non-federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See 2 C.F.R. 200.303.
5. Comparison of expenditures with budget amounts for each federal award.
6. Written procedures to implement the requirements of 2 C.F.R. 200.305.
7. Written procedures for determining the allowability of costs in accordance with 2 C.F.R. Part 200, Subpart E and the terms and conditions of the federal award.

2 C.F.R. 200.302

Internal Controls

The non-federal entity must:

1. Establish and maintain effective internal control over the federal award that provides reasonable assurance that the non-federal entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the federal 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 federal awards.
3. Evaluate and monitor the non-federal entity'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 non-federal entity considers sensitive consistent with applicable federal, state, local, and tribal laws regarding privacy and responsibility over confidentiality.

2 C.F.R. 200.303

Advanced Payment

The non-federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-federal entity, and financial management systems that meet the standards for fund control and accountability as established in 2 C.F.R. Part 200. Advance payments to a non-federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-federal entity must make timely payment to contractors in accordance with the contract provisions.

Standards governing the use of banks and other institutions as depositories of advance payments under federal awards are as follows:

1. The federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-federal entity or establish any eligibility requirements for depositories for funds provided to the non-federal entity. However, the non-federal entity must be able to account for funds received, obligated, and expended.
2. Advance payments of federal funds must be deposited and maintained in insured accounts whenever possible.

The non-federal entity must maintain advance payments of federal awards in interest-bearing accounts, unless the following apply:

1. The non-federal entity receives less than \$250,000 in federal awards per year.
2. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on federal cash balances.
3. The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.
4. A foreign government or banking system prohibits or precludes interest-bearing accounts.

Interest earned amounts up to \$500 per year may be retained by the non-federal entity for administrative expense. Any additional interest earned on federal advance payments deposited in interest-bearing accounts must be remitted annually as described by 2 C.F.R. 200.305(b)(9).

2 C.F.R. 200.305(b)(1), (7)–(9)

Budgets and
Program Plans

Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from federal awarding agencies for budget and program plan revisions, in accordance with 2 C.F.R. 200.308. *2 C.F.R. 200.308(b)*

Cost Principles

The cost principles described by 2 C.F.R. Part 200, Subpart E must be used in determining the allowable costs of work performed by the non-federal entity under federal awards. These principles also must be used by the non-federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

1. Arrangements under which federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.
2. For institutions of higher education, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the federal award.
3. Fixed amount awards. See also 2 C.F.R. 200.1 Definitions and 200.201.
4. Federal awards to hospitals (see Appendix IX to 2 C.F.R. Part 200).
5. Other awards under which the non-federal entity is not required to account to the federal government for actual costs incurred.

The application of these cost principles is based on the fundamental premises that:

1. The non-federal entity is responsible for the efficient and effective administration of the federal award through the application of sound management practices.
2. The non-federal entity assumes responsibility for administering federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the federal award.
3. The non-federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the federal award.
4. The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-federal entity. However, the accounting practices of the non-federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles and must provide for adequate documentation to support costs charged to the federal award.
5. In reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-federal entity is

applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-federal entity, the reasonableness and equity of such treatments should be fully considered. See the definition of indirect (facilities & administrative (F&A)) costs in 2 C.F.R. 200.1.

6. For non-federal entities that educate and engage students in research, the dual role of students as both trainees and employees, including pre- and post-doctoral staff, contributing to the completion of federal awards for research must be recognized in the application of these principles.
7. The non-federal entity may not earn or keep any profit resulting from federal financial assistance, unless explicitly authorized by the terms and conditions of the federal award. See also 2 C.F.R. 200.307.

2 C.F.R. 200.400, .401(a)

Cost Sharing	Cost sharing related to federal awards is subject to 2 C.F.R. 200.306. <i>2 C.F.R. 200.306</i>
Program Income	Non-federal entities are encouraged to earn income to defray program costs where appropriate. Such income is subject to 2 C.F.R. 200.307. <i>2 C.F.R. 200.307</i>
Period of Performance	If a federal awarding agency or pass-through entity approves an extension, or if a recipient extends under 2 C.F.R. 200.308(e)(2), the period of performance will be amended to end at the completion of the extension. If a termination occurs, the period of performance will be amended to end upon the effective date of termination. If a renewal award is issued, a distinct period of performance will begin. <i>2 C.F.R. 200.309</i>
Conflict of Interest	The non-federal entity must disclose in writing any potential conflict of interest to the federal awarding agency or pass-through entity in accordance with applicable federal awarding agency policy. <i>2 C.F.R. 200.112</i>
<i>Procurement</i>	The non-federal entity 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. Such 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 which employs or is about to employ

any of the parties indicated herein, 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 non-federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-federal entities 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 non-federal entity. 2 C.F.R. 200.318(c)(1)

Restricted
Contracts

Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 C.F.R. Part 183. The regulations in 2 C.F.R. Part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. 2 C.F.R. 200.215

Property Standards
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 non-federal entity.

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 non-federal entity must not dispose of or encumber its title or other interests.

When real property is no longer needed for the originally authorized purpose, the non-federal entity 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 as described by 2 C.F.R. 200.311(c)(1).
2. Sell the property and compensate the federal awarding agency as described by 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 non-federal entity is entitled to be paid as described by 2 C.F.R. 200.311(c)(3).

2 C.F.R. 200.311

Equipment

Subject to the requirements and conditions set forth in this section, title to equipment acquired under a federal award will vest upon acquisition in the non-federal entity. Unless a statute specifically authorizes the federal agency to vest title in the non-federal entity 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 non-federal entity 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 2 C.F.R. 200.313(b), (c), and (e).

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).

2 C.F.R. 200.313(a), (d)

Supplies

Title to supplies will vest in the non-federal entity 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 non-federal entity 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).

As long as the federal government retains an interest in the supplies, the non-federal entity must not use supplies acquired under a federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by federal statute.

2 C.F.R. 200.314

Federally Owned Property

Title to federally owned property remains vested in the federal government. The non-federal entity 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 non-federal entity 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 non-federal entity 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 federally owned property acquired under the federal award remains with the federal government.

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

*Intangible
Property*

Title to intangible property acquired under a federal award vests upon acquisition in the non-federal entity. The non-federal entity 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).

The non-federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a federal award. The federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

The non-federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the U.S. Department of Commerce at 37 C.F.R. Part 401.

2 C.F.R. 200.315

*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 non-federal entity 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 non-federal entity 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*

*Insurance
Coverage*

The non-federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally owned property need not be insured

	unless required by the terms and conditions of the federal award. 2 C.F.R. 200.310
Procurement <i>Generally</i>	The non-federal entity must have and use documented procurement procedures, consistent with state, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a federal award or subaward. The non-federal entity's documented procurement procedures must conform to the procurement standards identified in 2 C.F.R. 200.317 through 200.327. 2 C.F.R. 200.318(a)
<i>Eligible Contractors</i>	The non-federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also 2 C.F.R. 200.214. 2 C.F.R. 200.318(h)
Contracting with Certain Businesses	The non-federal entity must take all necessary affirmative steps, including those described by 2 C.F.R. 200.321, to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. 2 C.F.R. 200.321(a)
<i>Competition</i>	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. 2 C.F.R. 200.319(a)
<i>Methods of Procurement</i>	The non-federal entity must have and use documented procurement procedures, consistent with the standards of 2 C.F.R. 200.320 and 2 C.F.R. 200.317, 200.318, and 200.319 for any of the 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
Informal Procurement Methods	When the value of the procurement for property or services under a federal award does not exceed the simplified acquisition threshold (SAT) or a lower threshold established by a non-federal entity, formal procurement methods are not required. The non-federal entity 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 SAT include: 1. Micro-purchases: The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. To the maximum extent practicable, the non-federal entity should distribute micro-purchases equitably

among qualified suppliers. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-federal entity 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 non-federal entity. The micro-purchase method is subject to the requirements of 2 C.F.R. 200.320(a)(1).

2. Small purchases: 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 non-federal entity. The small purchases method is subject to the requirements of 2 C.F.R. 200.320(a)(2).

2 C.F.R. 200.320(a)

Formal
Procurement
Methods

When the value of the procurement for property or services under a federal financial assistance award exceeds the SAT, or a lower threshold established by a non-federal entity, 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 the noncompetitive procurement procedures below. 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 non-federal entity determines to be appropriate:

1. 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. The sealed bid method is subject to the requirements of 2 C.F.R. 200.320(b)(1).
2. 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. Proposals are awarded in accordance with the requirements described by 2 C.F.R. 200.320(b)(2).

2 C.F.R. 200.320(b)

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 non-federal entity; or 5. After solicitation of a number of sources, competition is determined inadequate. <i>2 C.F.R. 200.320(c)</i>
Domestic Preference	As appropriate and to the extent consistent with law, the non-federal entity 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. 300.022 must be included in all subawards including all contracts and purchase orders for work or products under this award. “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. “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. <i>2 C.F.R. 200.322</i>
Contract Provisions	The non-federal entity's contracts must contain the applicable provisions described in Appendix II to 2 C.F.R. Part 200. <i>2 C.F.R. 200.327</i>
Time and Materials Contracts	The non-federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at

its own risk. Time-and-materials type contract means a contract whose cost to a non-federal entity is the sum of:

1. The actual cost of materials; and
2. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

2 C.F.R. 200.318(j)

*Contract Cost
and Price*

The non-federal entity 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 non-federal entity must make independent estimates before receiving bids or proposals.

The non-federal entity 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 non-federal entity under 2 C.F.R. Part 200, Subpart E. The non-federal entity 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

Cost
Effectiveness

The non-federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to

consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the federal government, the non-federal entity 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 documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

The non-federal entity is encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

The non-federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

2 C.F.R. 200.318(d)–(g)

*Procurement of
Certain Services
and Equipment*

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract, or extend or renew a contract, to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services, as described by 2 C.F.R. 200.316, as a substantial or essential component of any system, or as critical technology as part of any system. *2 C.F.R. 200.318(a)*

*Procurement of
Recovered
Materials*

A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and estab-

	lishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. <i>2 C.F.R. 200.323</i>
<i>Bonding Requirements</i>	For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-federal entity in accordance with 2 C.F.R. 200.326. <i>2 C.F.R. 200.326</i>
<i>Oversight</i>	Non-federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. <i>2 C.F.R. 200.318(b)</i>
By Non-Federal Entities	
By Other Governmental Entities	The non-federal entity must make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-federal entity desires to have the review accomplished after a solicitation has been developed, the federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
	The non-federal entity 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 non-federal entity'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.

The non-federal entity is exempt from the pre-procurement review if the federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of 2 C.F.R. Part 200.

The non-federal entity may request that its procurement system be reviewed by the federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

The non-federal entity may self-certify its procurement system. Such self-certification must not limit the federal awarding agency's right to survey the system. Under a self-certification procedure, the federal awarding agency may rely on written assurances from the non-federal entity that it is complying with these standards. The non-federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

2 C.F.R. 200.325

Settlement of Contractual and Administrative Issues

The non-federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-federal entity of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgment for that of the non-federal entity unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction. *2 C.F.R. 200.318(k)*

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 non-federal entity. 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 non-federal entity's non-federally funded activities and in accordance with non-federal entity's written travel reimbursement policies. Notwithstanding the provisions of 2 C.F.R. 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the fed-

	eral awarding agency or pass-through entity when they are specifically related to the federal award. Charges for travel costs are subject to 2 C.F.R. 200.475. <i>2 C.F.R. 200.475(a)</i>
Records	Financial records, supporting documents, statistical records, and all other non-federal entity records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-federal entities with the exception of those situations described by 2 C.F.R. 200.334. <i>2 C.F.R. 200.334</i>
<i>Records Retention</i>	
Generally	
Procurement	The non-federal entity 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. <i>2 C.F.R. 200.318(i)</i>
<i>Methods for Collection, Transmission, and Storage of Information</i>	The federal awarding agency and the non-federal entity should, whenever practicable, collect, transmit, and store federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The federal awarding agency or pass-through entity must always provide or accept paper versions of federal award-related information to and from the non-federal entity upon request. If paper copies are submitted, the federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable. <i>2 C.F.R. 200.336</i>
Access to Records	The federal awarding agency, Inspector General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-federal entity which are pertinent to the federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-federal entity's personnel
By Governmental Entities	

for the purpose of interview and discussion related to such documents. The rights of access are not limited to the required retention period but last as long as the records are retained.

Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-federal entity and the federal awarding agency.

2 C.F.R. 200.337

By the Public

No federal awarding agency may place restrictions on the non-federal entity that limit public access to the records of the non-federal entity pertinent to a federal award, except for protected personally identifiable information (PII) or when the federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act, 5 U.S.C. 552, or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the federal awarding agency. The Freedom of Information Act (FOIA), 5 U.S.C. 552, does not apply to those records that remain under a non-federal entity's control except as required under 2 C.F.R. 200.315. Unless required by federal, state, local, and tribal statute, non-federal entities are not required to permit public access to their records. The non-federal entity's records provided to a federal agency generally will be subject to FOIA and applicable exemptions. *2 C.F.R. 200.338*

Performance
Reports

*Monitoring
Required*

The non-federal entity is responsible for oversight of the operations of the federal award supported activities. The non-federal entity must monitor its activities under federal awards to assure compliance with applicable federal requirements and performance expectations are being achieved. Monitoring by the non-federal entity must cover each program, function, or activity. See also 2 C.F.R. 200.332. *2 C.F.R. 200.329(a)*

*Reporting
Generally*

The federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information. As appropriate and in accordance with above-mentioned information collections, the federal awarding agency must require the recipient to relate financial data and accomplishments to performance goals and objectives of the federal award. Also, in accordance with above-mentioned common information collections, and when required by the terms and conditions of the federal award, recipients must provide cost information to demonstrate cost-effective practices (e.g., through unit-cost

data). In some instances (e.g., discretionary research awards), this will be limited to the requirement to submit technical performance reports (to be evaluated in accordance with federal awarding agency policy). Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the federal award has a standard against which non-federal entity performance can be measured. 2 C.F.R. 200.329(b)

*Nonconstruction
Performance
Reports*

The federal awarding agency must use standard, governmentwide OMB-approved data elements for collection of performance information, including performance progress reports, Research Performance Progress Reports.

The non-federal entity must submit performance reports at the interval required by the federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the federal award or could significantly affect program outcomes. Reports submitted annually by the non-federal entity and/or pass-through entity must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually reports must be due no later than 30 calendar days after the reporting period. Alternatively, the federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year federal awards. The final performance report submitted by the non-federal entity and/or pass-through entity must be due no later than 120 calendar days after the period of performance end date. A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the period of performance end date, all final performance reports as required by the terms and conditions of the federal award. See also 2 C.F.R. 200.344. If a justified request is submitted by a non-federal entity, the federal agency may extend the due date for any performance report.

As appropriate in accordance with above-mentioned performance reporting, these reports will contain, for each federal award, brief information on the following unless other data elements are approved by OMB in the agency information collection request:

1. A comparison of actual accomplishments to the objectives of the federal award established for the period. Where the accomplishments of the federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful.

Where performance trend data and analysis would be informative to the federal awarding agency program, the federal awarding agency should include this as a performance reporting requirement.

2. The reasons why established goals were not met, if appropriate.
3. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

2 C.F.R. 200.329(c)

*Construction
Performance
Reports*

For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by federal awarding agencies and pass-through entities to monitor progress under federal awards and subawards for construction. The federal awarding agency may require additional performance reports only when considered necessary. *2 C.F.R. 200.329(d)*

*Significant
Developments*

Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-federal entity must inform the federal awarding agency or pass-through entity as soon as the following types of conditions become known:

1. Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
2. Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

2 C.F.R. 200.329(e)

Site Visits

The federal awarding agency may make site visits as warranted by program needs. *2 C.F.R. 200.329(f)*

Waiver

The federal awarding agency may waive any performance report required by 2 C.F.R. Part 200 if not needed. *2 C.F.R. 200.329(g)*

*Real Property
Reports*

The federal awarding agency or pass-through entity must require a non-federal entity to submit reports at least annually on the status of real property in which the federal government retains an interest in accordance with 2 C.F.R. 200.330. *2 C.F.R. 200.330*

Audits	A non-federal entity that expends \$750,000 or more during the non-federal entity's fiscal year in federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 C.F.R. Part 200. A non-federal entity that expends less than \$750,000 during the non-federal entity's fiscal year in federal awards is exempt from federal audit requirements for that year, except as noted in 2 C.F.R. 200.503, but records must be available for review or audit by appropriate officials of the federal agency, pass-through entity, and Government Accountability Office (GAO). <i>2 C.F.R. 200.501(a), (d)</i>
Collection of Amounts Due	Any funds paid to the non-federal entity in excess of the amount to which the non-federal entity is finally determined to be entitled under the terms of the federal award constitute a debt to the federal government. If not paid within 90 calendar days after demand, the federal awarding agency may reduce the debt by: 1. Making an administrative offset against other requests for reimbursements; 2. Withholding advance payments otherwise due to the non-federal entity; or 3. Other action permitted by federal statute. Except where otherwise provided by statutes or regulations, the federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards, 31 C.F.R. Parts 900 through 999. The date from which interest is computed is not extended by litigation or the filing of any form of appeal. <i>2 C.F.R. 200.346</i>
Mandatory Disclosure	The non-federal entity or applicant for a federal award 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. Non-federal entities that have received a federal award including the term and condition outlined in Appendix XII to 2 C.F.R. Part 200 are required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM) (currently Federal Awardee Performance and Integrity Information System or FAPIIS). Failure to make required disclosures can result in any of the remedies described in 2 C.F.R. 200.339. (See also 2 C.F.R. Part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313) <i>2 C.F.R. 200.113</i>

Noncompliance	If a non-federal entity 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. 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 non-federal entity 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
<i>Opportunities to Object</i>	Upon taking any remedy for non-compliance, the federal awarding agency must provide the non-federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the federal awarding agency. The federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals, or other administrative proceedings to which the non-federal entity is entitled under any statute or regulation applicable to the action involved. 2 C.F.R. 200.342
Suspension and Debarment	Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. Part 180. The regulations in 2 C.F.R. Part 180 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

Termination of
Federal Award

The federal award may be terminated in whole or in part as follows:

1. By the federal awarding agency or pass-through entity, if a non-federal entity fails to comply with the terms and conditions of a federal award;
2. By the federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
3. By the federal awarding agency or pass-through entity with the consent of the non-federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
4. By the non-federal entity upon sending to the federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the federal award or subaward will not accomplish the purposes for which the federal award was made, the federal awarding agency or pass-through entity may terminate the federal award in its entirety; or
5. By the federal awarding agency or pass-through entity pursuant to termination provisions included in the federal award.

When a federal award is terminated or partially terminated, both the federal awarding agency or pass-through entity and the non-federal entity remain responsible for compliance with the requirements in 2 C.F.R. 200.344 and 200.345.

2 C.F.R. 200.340(a), (d)

U.S. Education
Department
General
Administrative
Regulations

The U.S. Department of Education adopts the OMB Guidance in 2 C.F.R. Part 200, except for 2 C.F.R. 200.102(a) and 2 C.F.R. 200.207(a). Thus, 2 C.F.R. Part 3474 gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department. *2 C.F.R. 3474.1(a)*

*Direct Grant
Programs*

The regulations in 34 C.F.R. Part 75 apply to each direct grant program of the U.S. Department of Education. *34 C.F.R. 75.1(a)*

*State-
administered
Programs*

The regulations in 34 C.F.R. Part 76 apply to each state-administered program of the U.S. Department of Education. *34 C.F.R. 76.1(a)*

<i>General Education Provision Act</i>	The regulations in 34 C.F.R. Part 81 govern the enforcement of legal requirements under applicable programs administered by the U.S. Department of Education and implement Part E of the General Education Provisions Act (GEPA). <i>34 C.F.R. 81.1</i>
U.S. Department of Agriculture	Title 2 C.F.R. Part 400 adopts the OMB guidance in 2 C.F.R. Part 200, Subparts A–F, as supplemented by 2 C.F.R. Part 400, as U.S. Department of Agriculture (USDA) policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by 2 C.F.R. Part 400. <i>2 C.F.R. 400.1</i>
U.S. Department of Defense	U.S. Department of Defense (DOD) components must conform the format of new grants and cooperative agreements to the standard award format specified in 2 C.F.R. Part 1120. The standard format provides locations within the award for: 1. General terms and conditions, including the administrative and national policy requirements discussed in 2 C.F.R. 1104.105(a) and (b), respectively; and 2. Any award-specific terms and conditions discussed in 2 C.F.R. 1104.110. <i>2 C.F.R. 1104.100</i> On an interim basis pending completion of the update of the DOD Grant and Agreement Regulations (DODGARs) to implement OMB guidance published in 2 C.F.R. Part 200, the provisions of 2 C.F.R. Parts 1126 through 1138 govern the administrative requirements to be included in the general terms and conditions of DOD components' new grants and cooperative agreements awarded to institutions of higher education. 2 C.F.R. Part 1122 governs the national policy requirements to be included in DOD components' new grants and cooperative agreements awarded to all types of entities. <i>2 C.F.R. 1104.105(a)(1), (b)</i> On an interim basis pending completion of the update of the DODGARs to implement OMB guidance published in 2 C.F.R. Part 200, the guidance in 2 C.F.R. Part 200 governs administrative requirements to be included in any award-specific terms and conditions used to supplement the general terms and conditions of a new grant or cooperative agreement awarded to an institution of higher education. <i>2 C.F.R. 1104.110(a)</i>

On an interim basis pending completion of the update of the DODGARs to implement OMB guidance published in 2 C.F.R. Part 200, DOD components' internal pre-award, time-of-award, and post-award procedures will continue to comply with requirements in 32 C.F.R. Parts 21 and 22 and other applicable defense grant and agreement regulatory system policies. 2 C.F.R. 1104.115

U.S. Department of
Health and Human
Services

The U.S. Department of Health and Human Services (HHS) adopts the OMB Guidance in 2 C.F.R. Part 200, and has codified the text, with HHS-specific amendments in 45 C.F.R. Part 75. Thus, 2 C.F.R. Part 300 gives regulatory effect to the OMB guidance and supplements the guidance as needed for HHS. 2 C.F.R. 300.1

U.S. Department of
Justice

The U.S. Department of Justice adopts the OMB Guidance in 2 C.F.R. Part 200, except as otherwise may be provided by 2 C.F.R. Part 2800. Unless expressly provided otherwise, any reference in 2 C.F.R. Part 2800 to any provision of law not in 2 C.F.R. Part 2800 shall be understood to constitute a general reference and thus to include any subsequent changes to the provision. 2 C.F.R. 2800.101

U.S. Department of
Labor

The U.S. Department of Labor (DOL) adopts the OMB Guidance in the uniform administrative requirements, cost principles, and audit requirements for federal awards to non-federal entities, 2 C.F.R. Part 200, Subparts A–F, as supplemented by 2 C.F.R. Part 2900, as the DOL policies and procedures for financial assistance administration. Part 2900 ~~satisfies the requirements of 2 C.F.R. 200.110(a) and~~ gives regulatory effect to the OMB guidance as supplemented by Part 2900. The DOL also has programmatic and administrative regulations located in C.F.R. Titles 20 and 29. 2 C.F.R. 2900.4

**2Tax Bonds and
Maintenance Tax**

The governing board of each junior college district shall be authorized to issue negotiable coupon bonds for the construction and equipment of school buildings and the purchase of the necessary sites therefor, and levy and pledge annual ad valorem taxes sufficient to pay the principal of and interest on said bonds as they come due, and to levy annual ad valorem taxes for the maintenance of its public junior college or junior colleges; provided that the annual bond tax shall never exceed \$0.50 on the \$100 valuation of taxable property in the district, and the annual bond tax, if any, together with the annual maintenance tax shall never exceed the aggregate of \$1 on the \$100 valuation of taxable property in the district.

Such bonds may be issued in various series or issues, and shall mature serially or otherwise not more than 40 years from their date, and shall bear interest at such rate or rates as shall be determined within the discretion of the board. Said bonds, and the interest coupons appertaining thereto, shall be negotiable instruments, and they may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and shall be signed and executed, as provided by the board in the resolution or order authorizing the issuance of said bonds. All bonds shall be sold to the highest bidder for not less than their par value and accrued interest.

Education Code 130.122(a)

All bonds shall be issued in accordance with the Public Security Procedures Act and Education Code 130.122. *Gov't Code 1201*

**General Obligation
Bonds**

Notwithstanding any other provision of law, a political subdivision, including a college district, may not issue general obligation bonds to purchase, improve, or construct one or more improvements to real property, to purchase one or more items of personal property, or to do both, if the weighted average maturity of the issue of bonds exceeds 120 percent of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of bonds. *Gov't Code 1253.003*

***Use of Unspent
Proceeds***

A political subdivision other than a school district may use the unspent proceeds of issued general obligation bonds only for the specific purposes for which the bonds were authorized, to retire the bonds, or for a purpose other than the specific purposes for which the bonds were authorized if:

1. The specific purposes are accomplished or abandoned; and

2. A majority of the votes cast in an election held in the political subdivision approve the use of the proceeds for the proposed purpose.

The election order and the notice of election for an election described by item 2 must state the proposed purpose for which the bond proceeds are to be used. A political subdivision must hold the election in the same manner as an election to issue bonds in the political subdivision.

Gov't Code 1253.003

Capital Appreciation
Bonds

"Capital appreciation bond" means a bond that accrues and compounds interest from its date of delivery, the interest on which by its terms is payable only upon maturity or prior redemption.

A junior college district or other political subdivision may not issue capital appreciation bonds that are secured by ad valorem taxes unless:

1. The bonds have a scheduled maturity date that is not later than 20 years after the date of issuance;
2. The governing body of the political subdivision has received a written estimate of the cost of the issuance, including:
 - a. The amount of principal and interest to be paid until maturity;
 - b. The amount of fees to be paid to outside vendors, including vendors who sell products to be financed by the bond issuance;
 - c. The amount of fees to be paid to each financing team member; and
 - d. The projected tax impact of the bonds and the assumptions on which the calculation of the projected tax impact is based;
3. The governing body of the political subdivision has determined in writing whether any personal or financial relationship exists between the members of the governing body and any financial adviser, bond counsel, bond underwriter, or other professional associated with the bond issuance. The governing body of a political subdivision that makes a determination that a personal or financial relationship exists shall submit the determination to the Texas Ethics Commission; and

4. The governing body of the political subdivision posts prominently on the political subdivision's internet website and enters in the minutes of the governing body:
 - a. The total amount of the proposed bonds;
 - b. The length of maturity of the proposed bonds;
 - c. The projects to be financed with bond proceeds;
 - d. The intended use of bond proceeds not spent after completion of the projects identified in paragraph c;
 - e. The total amount of the political subdivision's outstanding bonded indebtedness at the time of the election on the bonds, including the amount of principal and interest to be paid on existing bond indebtedness until maturity;
 - f. The total amount of the political subdivision's outstanding bonded indebtedness, including the amount of principal and interest to be paid until maturity; and
 - g. The information received under item 2 and determined under item 3.

The total amount of capital appreciation bonds may not exceed 25 percent of the political subdivision's total outstanding bonded indebtedness at the time of the issuance, including the amount of principal and interest to be paid on the outstanding bonds until maturity.

The governing body of a political subdivision shall regularly update the debt information posted on the political subdivision's internet website under paragraph 4f to ensure that the information is current and accurate.

Gov't Code 1201.0245(a)–(d), (g)

Exclusions

Capital appreciation bond proceeds may not be used to purchase the following items, unless an item has an expected useful life, determined based on the depreciable life of the asset under the Internal Revenue Code of 1986, that exceeds the bond's maturity date:

1. Items more regularly considered maintenance items, including replacement HVAC units, upgraded plumbing, or similar items; or
2. Transportation-related items, including buses.

Government Code 1201.0245 does not apply to the issuance of refunding bonds under Government Code Chapter 1207 or capital

appreciation bonds for the purpose of financing transportation projects.

Gov't Code 1201.0245(e), (j)

*Unspent
Proceeds*

Capital appreciation bond proceeds unspent after completion of the project identified as the proceeds' intended use may be used only for a use identified on the political subdivision's website under paragraph 4d, above, unless another use is approved by the voters of the political subdivision at an election held for that purpose. *Gov't Code 1201.0245(f)*

*Extension of
Maturity Date*

A junior college district may not extend the maturity date of an issued capital appreciation bond, including through the issuance of refunding bonds that extend the maturity date. *Gov't Code 1201.0245(h)*

Exception

A political subdivision may extend the maturity date of an issued capital appreciation bond only if:

1. The extension of the maturity date will decrease the total amount of projected principal and interest to maturity; or
2. The political subdivision is a school district and:
 - a. The maximum legally allowable tax rate for indebtedness has been adopted; and
 - b. TEA certifies in writing that the solvency of the permanent school fund's bond guarantee program would be threatened without the extension.

Gov't Code 1201.0245(i)

Credit Agreements

A junior college district that at the time of the issuance of obligations and execution of credit agreements has at least 2,000 full-time students or the equivalent or a combined aggregate principal amount of at least \$50 million of outstanding bonds and voted, but unissued, bonds may, in the issuance of bonds as provided by Education Code 130.122, exercise the powers granted to the governing body of an issuer with regard to the issuance of obligations and execution of credit agreements under Government Code Chapter 1371.

A proposition to issue bonds to which Education Code 130.1221 applies must include the question of whether the board may levy, pledge, assess, and collect annual ad valorem taxes sufficient to pay the principal of and interest on the bonds and the costs of any credit agreements executed in connection with the bonds.

Limits

A district may not issue bonds in an amount greater than the greater of:

1. Twenty-five percent of the sum of:
 - a. The aggregate principal amount of all district debt payable from ad valorem taxes that is outstanding at the time the bonds are issued; and
 - b. The aggregate principal amount of all bonds payable from ad valorem taxes that have been authorized but not issued;
2. Twenty-five million dollars, in a district that has at least 3,500 but not more than 15,000 full-time students or the equivalent; or
3. Fifty million dollars, in a district that has more than 15,000 full-time students or the equivalent.

Government Code 1371.057 and 1371.059 govern approval by the attorney general of obligations issued under the authority of Education Code 130.1221.

Education Code 130.1221

Elections

No such bonds shall be issued and none of the aforesaid taxes shall be levied unless authorized by a majority of the electors voting at an election held for such purpose in accordance with law, at the expense of the district. Each such election shall be called by resolution or order of the board, which shall set forth the date of the election, the proposition or propositions to be submitted and voted on, the polling place or places, and any other matters deemed necessary or advisable by the board.

The election shall be held on a uniform election date.

Education Code 130.122(b); Election Code 41.001(a) [See BBB]

Call for Election

For an election to be held on a uniform election date, the election shall be called not later than the 78th day before election day. [See BBB] *Election Code 3.003, .005, 41.002*

Notice of Election

Notice of said election shall be given by publishing a substantial copy of the election resolution or order one time, at least ten days prior to the date set for the election, in a newspaper of general circulation in the district. The person responsible for giving the notice must retain a copy of the published notice that contains the name of the newspaper and the date of publication. *Education Code 130.122(b); Election Code 4.003(a)(1), (c), .005*

The governing body of a political subdivision that orders an election shall deliver notice of the election, including the location of each polling place, to the county clerk and voter registrar of each county in which the political subdivision is located not later than the 60th day before election day. *Election Code 4.008(a)*

*Posting Notice of
Election*

In addition, **not later than the 21st day before election day, a county shall post a copy of a notice of the election, provided to the county under Election Code 4.008(a),** which must include the location of each polling place, ~~must be posted not later than the 21st day before election day, the~~ **on the county's internet web-site, if the county maintains a website. An** authority responsible for giving notice of ~~the an~~ election ~~shall~~ **may** post a copy of the notice, ~~which must include the location of each polling place,~~ on the bulletin board used for posting notices of the meetings of the governing body of the political subdivision that the authority serves. **If a county does not maintain a website, the authority responsible for giving notice of the election shall post a copy of a notice of the election on the bulletin board used for posting notices of the meetings of the governing body of the political subdivision that the authority serves. The notice posted under this provision must remain posted continuously through election day.**

The person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the authority responsible for giving the election notice after the last posting is made.

Election Code 4.003(a)(1), (b)–(c), .004–.005

Election Order

"Debt obligation" means an issued public security, as defined by Government Code 1201.002, that is secured by and payable from ad valorem taxes. The term does not include public securities that are designated as self-supporting by the political subdivision issuing the securities.

The document ordering an election to authorize a political subdivision, including a college district, to issue debt obligations must distinctly state:

1. The proposition language that will appear on the ballot;
2. The purpose for which the debt obligations are to be authorized;
3. The principal amount of the debt obligations to be authorized;
4. That taxes sufficient to pay the principal of and interest on the debt obligations may be imposed;

5. A statement of the estimated tax rate if the debt obligations are authorized or of the maximum interest rate of the debt obligations or any series of the debt obligations, based on the market conditions at the time of the election order;
6. The maximum maturity date of the debt obligations to be authorized or that the debt obligations may be issued to mature over a specified number of years not to exceed the maximum number of years authorized by law;
7. The aggregate amount of the outstanding principal of the political subdivision's debt obligations as of the date the election is ordered;
8. The aggregate amount of the outstanding interest on the debt obligations of the political subdivision as of the date the election is ordered, which may be based on the political subdivision's expectations relative to variable rate debt obligations; and
9. The ad valorem debt service tax rate for the political subdivision at the time the election is ordered, expressed as an amount per \$100 valuation of taxable property.

Election Code 3.009

*Posting the
Election Order*

A debt obligation election order required under Election Code 3.009 shall be posted on election day and during early voting by personal appearance, in a prominent location at each polling place; not later than the 21st day before the election, in three public places in the boundaries of the political subdivision holding the election; and during the 21 days before the election, on the political subdivision's internet website, prominently and together with the notice of the election, the contents of the proposition, and any sample ballot prepared for the election, if the political subdivision maintains an internet website. *Election Code 4.003(f)*

Propositions

The ballot for a measure seeking voter approval of the issuance of debt obligations by a political subdivision shall specifically state:

1. A general description of the purposes for which the debt obligations are to be authorized;
2. A plain language description of the single specific purposes for which the debt obligations are to be authorized;
3. The total principal amount of the debt obligations to be authorized; and
4. That taxes sufficient to pay the principal of and interest on the debt obligations will be imposed.

Each single specific purpose for which debt obligations requiring voter approval are to be issued must be printed on the ballot as a separate proposition. A proposition may include as a specific purpose one or more structures or improvements serving the substantially same purpose and may include related improvements and equipment necessary to accomplish the specific purpose.

Gov't Code 1251.052(a)–(a-1); Election Code 52.072(f)

Voter Information
Document

A political subdivision with at least 250 registered voters on the date the governing body of the political subdivision adopts the debt obligation election order must prepare a voter information document for each proposition to be voted on at the election. The political subdivision shall post the voter information document in the same manner as a debt obligation election order is required to be posted under Election Code 4.003(f) and may include the voter information document in the debt obligation election order. The voter information document must distinctly state:

1. The language that will appear on the ballot;
2. The following information formatted as a table:
 - a. The principal of the debt obligations to be authorized;
 - b. The estimated interest for the debt obligations to be authorized;
 - c. The estimated combined principal and interest required to pay on time and in full the debt obligations to be authorized; and
 - d. As of the date the political subdivision adopts the debt obligation election order:
 - (1) The principal of all outstanding debt obligations of the political subdivision;
 - (2) The estimated remaining interest on all outstanding debt obligations of the political subdivision, which may be based on the political subdivision's expectations relative to the interest due on any variable rate debt obligations; and
 - (3) The estimated combined principal and interest required to pay on time and in full all outstanding debt obligations of the political subdivision, which may be based on the political subdivision's expectations relative to the interest due on any variable rate debt obligations;
3. The estimated maximum annual increase in the amount of taxes that would be imposed on a residence homestead in the

political subdivision with an appraised value of \$100,000 to repay the debt obligations to be authorized, if approved, based upon assumptions made by the governing body of the political subdivision; and

4. Any other information that the political subdivision considers relevant or necessary to explain the required information.

Gov't Code 1251.052(b)

The governing body of the political subdivision shall identify in the voter information document the major assumptions made in connection with the statement required by item 3, including:

1. The amortization of the political subdivision's debt obligations, including outstanding debt obligations and the proposed debt obligations;
2. Changes in estimated future appraised values within the political subdivision; and
3. The assumed interest rate on the proposed debt obligations.

A political subdivision that maintains an internet website shall provide the information described by Government Code 1251.052(b) on its website in an easily accessible manner beginning not later than the 21st day before election day and ending on the day after the date of the debt obligation election.

Gov't Code 1251.052(c)–(d)

Canvass

The board shall canvass the returns and declare the results of such election. *Education Code 130.122(b)*

Political Advertising

An officer or employee of a political subdivision, including a college district, may not knowingly spend or authorize the spending of public funds for political advertising. The restriction does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.

An officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:

1. The officer or employee knows is false; and
2. Is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

It is an affirmative defense for an offense under this section or the imposition of a civil penalty for conduct under this section that an

officer or employee of a political subdivision reasonably relied on a court order or an interpretation in a written opinion issued by a court of record, the attorney general, or the Texas Ethics Commission.

On written request of the governing body of a political subdivision that has ordered an election on a measure, the Texas Ethics Commission shall prepare an advance written advisory opinion as to whether a particular communication relating to a measure complies with the section.

Election Code 255.003(a)–(b-1), (d)–(e) [See CHE]

Newsletters

A newsletter of a public officer of a political subdivision is not political advertising if:

1. It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;
2. It includes no more than eight personally phrased references (such as the public officer's name, "I", "me", "the city council member") on a page that is 8 1/2" x 11" or larger, with a reasonable reduction of the number of such personally phrased references in pages smaller than 8 1/2" x 11"; and
3. When viewed as a whole and in the proper context:
 - a. Is informational rather than self-promotional;
 - b. Does not advocate passage or defeat of a measure; and
 - c. Does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.

1 TAC 26.2

Refunds

An issuer, including a college district, may issue refunding bonds under Government Code Chapter 1207 to refund all or any part of the issuer's outstanding bonds, notes, or other general or special obligations.

Subject to the provisions of Government Code Chapter 1207 and Education Code 130.122, the governing board of each junior college district is authorized to refund or refinance all or any part of any of its outstanding bonds and matured but unpaid interest coupons payable from ad valorem taxes by the issuance of negotiable coupon refunding bonds payable from ad valorem taxes.

Gov't Code 1207.002; Education Code 130.122(c)

APPROPRIATIONS AND REVENUE SOURCES
BOND ISSUES

CAD
(LEGAL)

**Authorized Unissued
Bonds**

All tax bonds voted in any junior college district in accordance with law but unissued by September 1, 1969, may be issued in the manner provided in Education Code 130.122, without an additional election; and all maintenance taxes voted in any district in accordance with law may be levied and collected in the manner provided by law without an additional election. *Education Code 130.122(g)*

**Tax Bonds and
Maintenance Tax**

The governing board of each junior college district shall be authorized to issue negotiable coupon bonds for the construction and equipment of school buildings and the purchase of the necessary sites therefor, and levy and pledge annual ad valorem taxes sufficient to pay the principal of and interest on said bonds as they come due, and levy annual ad valorem taxes for the further maintenance of its public junior college or junior colleges; provided that the annual bond tax shall never exceed \$.50 on the \$100 valuation of taxable property in the district, and the annual bond tax, if any, together with the annual maintenance tax shall never exceed the aggregate of \$1 on the \$100 valuation of taxable property in the district. [See CAD] *Education Code 130.122(a)*

Tax Rate Calculation

After the assessor for the taxing unit, including a college district, submits the appraisal roll for the taxing unit to the governing body of the taxing unit as required by Tax Code 26.04(b), an officer or employee designated by the governing body shall calculate the no-new-revenue tax rate and the voter-approval tax rate for the taxing unit in accordance with Tax Code 26.04.

The designated officer or employee shall use the tax rate calculation forms prescribed by the comptroller under Tax Code 5.07 in calculating the no-new-revenue tax rate and the voter-approval tax rate.

As soon as practicable after the designated officer or employee calculates the no-new-revenue tax rate and the voter-approval tax rate of the taxing unit, the designated officer or employee shall submit the tax rate calculation forms used in calculating the rates to the county assessor-collector for each county in which all or part of the territory of the taxing unit is located.

Tax Code 26.04(c), (d-1), (d-3)

Notice

By August 7 or as soon thereafter as practicable, the designated officer or employee shall submit the no-new-revenue tax rate and the voter-approval tax rate in accordance with Tax Code 26.04 to the governing body. The designated officer or employee shall post prominently on the home page of the taxing unit's internet website in the form prescribed by the comptroller:

1. The no-new-revenue tax rate, the voter-approval tax rate, and an explanation of how they were calculated;
2. The estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding existing debt obligations; and

3. A schedule of the taxing unit's debt obligations as prescribed by Tax Code 26.04(e)(3).

Tax Code 26.04(e)

Tax Rate Adoption

The governing body of each taxing unit shall adopt a tax rate for the current tax year and shall notify the assessor for the taxing unit of the rate adopted. The governing body must adopt a tax rate before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, except that the governing body must adopt a tax rate that exceeds the voter-approval tax rate not later than the 71st day before the next uniform election date prescribed by Election Code 41.001 that occurs in November of that year. The tax rate consists of two components, each of which must be approved separately. The components are:

1. The rate that, if applied to the total taxable value, will impose the total amount described by Tax Code 26.04(e)(3)(c), less any amount of additional sales and use tax revenue that will be used to pay debt service; and
2. The rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the taxing unit for the next year.

A taxing unit may not impose property taxes in any year until the governing body has adopted a tax rate for that year, and the annual tax rate shall be set by ordinance, resolution, or order, depending on the method prescribed by law for adoption of a law by the governing body. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget.

Tax Code 26.05(a)–(b)

**No-New-Revenue
Tax Rate**

The vote on the ordinance, resolution, or order setting a tax rate that exceeds the no-new-revenue tax rate must be a record vote, and at least 60 percent of the members of the governing body must vote in favor of the ordinance, resolution, or order. A motion to adopt an ordinance, resolution, or order setting a tax rate that exceeds the no-new-revenue tax rate must be made in the following form: "I move that the property tax rate be increased by the adoption of a tax rate of (specify tax rate), which is effectively a (insert percentage by which the proposed tax rate exceeds the no-new-revenue tax rate) percent increase in the tax rate." *Tax Code 26.05(b)*

Maintenance and
Operations Tax
Rate

If the ordinance, resolution, or order sets a tax rate that, if applied to the total taxable value, will impose an amount of taxes to fund maintenance and operation expenditures of the taxing unit that exceeds the amount of taxes imposed for that purpose in the preceding year, the taxing unit must include in the ordinance, resolution, or order in type larger than the type used in any other portion of the document the following statement: "THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE."; and if the tax rate exceeds the no-new-revenue maintenance and operations rate, the following statement: "THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$(Insert amount)." *Tax Code 26.05(b)*

Internet Posting

The taxing unit must include on the home page of the internet website of the taxing unit the following statement: "(Insert name of unit) ADOPTED A TAX RATE THAT WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE"; and if the tax rate exceeds the no-new-revenue maintenance and operations rate, the following statement: "THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$(Insert amount)." *Tax Code 26.05(b)*

**Tax Rate Exceeding
the Voter-Approval
or No-New-Revenue
Tax Rate**

The governing body of a taxing unit other than a school district may not adopt a tax rate that exceeds the lower of the voter-approval tax rate or the no-new-revenue tax rate calculated as provided by Tax Code Chapter 26 until the governing body has held a public hearing on the proposed tax rate and has otherwise complied with Tax Code 26.06 and 26.065. The governing body of a taxing unit shall reduce a tax rate set by law or by vote of the electorate to the lower of the voter-approval tax rate or the no-new-revenue tax rate and may not adopt a higher rate unless it first complies with Tax Code 26.06.

The governing body of a taxing unit other than a school district may not hold a public hearing on a proposed tax rate or a public meeting to adopt a tax rate until the fifth day after the date the chief appraiser of each appraisal district in which the taxing unit participates has delivered the notice required by Tax Code 26.04(e-2) and complied with Tax Code 26.17(f).

Notwithstanding Tax Code 26.05(a), the governing body of a taxing unit other than a school district may not adopt a tax rate until the chief appraiser of each appraisal district in which the taxing unit participates has complied with Tax Code 26.05(d-1).

Tax Code 26.05(d)-(d-2)

Public Hearing

The public hearing required above may not be held before the fifth day after the notice of the public hearing is given. The hearing must be on a weekday that is not a public holiday. The hearing must be held inside the boundaries of the unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. At the hearing, the governing body must afford adequate opportunity for proponents and opponents of the tax increase to present their views.

The notice of a public hearing shall be in the size and form prescribed by Tax Code 26.06(b)-(b-4). In addition, the notice must include at the end of the notice the information prescribed by Tax Code 26.062. The notice of a public hearing may be delivered by mail to each property owner in the taxing unit, or may be published in a newspaper. If the notice is published in a newspaper, it may not be in the part of the paper in which legal notices and classified advertisements appear. If the taxing unit publishes the notice in a newspaper, the taxing unit must also post the notice prominently on the home page of the internet website of the taxing unit from the date the notice is first published until the second public hearing is concluded.

The governing body may vote on the proposed tax rate at the public hearing. If the governing body does not vote on the proposed tax rate at the public hearing, the governing body shall announce at the public hearing the date, time, and place of the meeting at which it will vote on the proposed tax rate.

Tax Code 26.06(a)-(d), .062

Adoption of Tax
Rate After Hearing

A meeting to vote on the tax increase may not be held later than the seventh day after the date of the public hearing. The meeting must be held inside the boundaries of the taxing unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access.
Tax Code 26.06(e)

Supplemental
Notice

In addition to the notice required under Tax Code 26.06, the governing body of a taxing unit required to hold a public hearing by Tax Code 26.05(d) shall give notice of the hearing in the manner provided by this section.

The taxing unit shall post notice of the public hearing prominently on the home page of the internet website of the taxing unit continuously for at least seven days immediately before the public hearing on the proposed tax rate increase and at least seven days immediately before the date of the vote proposing the increase in the tax rate.

If the taxing unit has free access to a television channel, the taxing unit shall request that the station carry a 60-second notice of the public hearing at least five times a day between the hours of 7:00 a.m. and 9:00 p.m. for at least seven days immediately before the public hearing on the proposed tax rate increase and at least seven days immediately before the date of the vote proposing the increase in the tax rate.

The notice of the public hearing required by Tax Code 26.065(b) must contain a statement that is substantially the same as the statement required by Tax Code 26.06(b).

This section does not apply to a taxing unit if the taxing unit:

1. Is unable to comply with the requirements of this section because of the failure of an electronic or mechanical device, including a computer or server; or
2. Is unable to comply with the requirements of this section due to other circumstances beyond its control.

A person who owns taxable property is not entitled to an injunction restraining the collection of taxes by the taxing unit in which the property is taxable if the taxing unit has, in good faith, attempted to comply with the requirements of this section.

Tax Code 26.065

**Tax Rate Below the
Voter-Approval or
No-New-Revenue
Tax Rate**

This section applies only to the governing body of a taxing unit other than a school district that proposes to adopt a tax rate that does not exceed the lower of the no-new-revenue tax rate or the voter-approval tax rate calculated as provided by Tax Code Chapter 26.

The notice of the meeting at which the governing body of the taxing unit will vote on the proposed tax rate must contain a statement in the form prescribed by Tax Code 26.061(b). In addition to including the information described by Tax Code 26.061(b), the notice must include the information described by Tax Code 26.062.

The notice required under this section must be provided in the manner required under Tax Code 26.06(c).

Tax Code 26.061

**Failure to Timely
Adopt a Tax Rate**

If the governing body of a taxing unit does not adopt a tax rate before the date required by Tax Code 26.05(a), the tax rate for the taxing unit for that tax year is the lower of the no-new-revenue tax rate calculated for that tax year or the tax rate adopted by the taxing unit for the preceding tax year. A tax rate established by this provision is treated as an adopted tax rate. Before the fifth day after the establishment of a tax rate by this provision, the governing body of the taxing unit must ratify the applicable tax rate in the manner required by Tax Code 26.05(b). *Tax Code 26.05(c)*

**Election to
~~Repeal~~Approve
Increase**

If the governing body of a special taxing unit, including a community college, adopts a tax rate that exceeds the taxing unit's voter-approval tax rate, the registered voters of the taxing unit at an election held for that purpose must determine whether to approve the adopted tax rate. ~~When increased expenditure of money by a taxing unit is necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, that has impacted the taxing unit and the governor has declared any part of the area in which the taxing unit is located as a disaster area, an election is not required under this section to approve the tax rate adopted by the governing body for the year following the year in which the disaster occurs.~~

The governing body shall order that the election be held in the taxing unit on the uniform election date prescribed by Election Code 41.001 that occurs in November of the applicable tax year. The order calling the election may not be issued later than the 71st day before the date of the election. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Approving the ad valorem tax rate of \$ _____ per \$100 valuation in (name of taxing unit) for the current year, a rate that is \$ _____ higher per \$100 valuation than the voter-approval tax rate of (name of taxing unit), for the purpose of (description of purpose of increase). Last year, the ad valorem tax rate in (name of taxing unit) was \$ _____ per \$100 valuation." The ballot proposition must include the adopted tax rate, the difference between the adopted tax rate and the voter-approval tax rate, and the taxing unit's tax rate for the preceding tax year in the appropriate places.

If a majority of the votes cast in the election favor the proposition, the tax rate for the current year is the rate that was adopted by the governing body. If the proposition is not approved, the taxing unit's tax rate for the current tax year is the taxing unit's voter-approval tax rate.

Tax Code 26.07(b)–(e)

Exception

In accordance with Tax Code 26.042, when increased expenditure of money by a taxing unit is necessary to respond to a

disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, epidemic, or pandemic, that has impacted the taxing unit and the governor has declared any part of the area in which the taxing unit is located as a disaster area, an election is not required under Tax Code 26.07 to approve the tax rate adopted by the governing body for the year following the year in which the disaster occurs. *Tax Code 26.042*

Call for Election An election ordered by an authority of a political subdivision shall be ordered not later than the 62nd day before election day. *Election Code 3.005(a)*

Exception For an election to be held on a uniform election date, the election shall be ordered not later than the 78th day before election day. [See BBB] *Election Code 3.003, .005(c), 41.002*

Notice to County Clerk and Voter Registrar The governing body of a political subdivision, including a college district, that orders an election shall deliver notice of the election to the county clerk and voter registrar of each county in which the political subdivision is located not later than the 60th day before election day. *Election Code 4.008(a)*

Proposition In addition to any other requirement imposed by law for a proposition, including a provision prescribing the proposition language [see BBB], a proposition submitted to the voters for approval of the reduction of a tax shall specifically state the amount of tax rate reduction or the tax rate for which approval is sought. *Election Code 52.072(e)*

Dissemination of Tax Information

Posting of Information Online Each taxing unit shall maintain an internet website or have access to a generally accessible internet website that may be used for the purposes of this section. Each taxing unit shall post or cause to be posted on the internet website the following information in a format prescribed by the comptroller:

1. The name of each member of the governing body of the taxing unit;
2. The mailing address, email address, and telephone number of the taxing unit;
3. The official contact information for each member of the governing body of the taxing unit, if that information is different from the information described by item 2;
4. The taxing unit's budget for the preceding two years;
5. The taxing unit's proposed or adopted budget for the current year;

6. The change in the amount of the taxing unit's budget from the preceding year to the current year, by dollar amount and percentage;
7. In the case of a taxing unit other than a school district, the amount of property tax revenue budgeted for maintenance and operations for the preceding two years and the current year;
8. In the case of a taxing unit other than a school district, the amount of property tax revenue budgeted for debt service for the preceding two years and the current year;
9. The tax rate for maintenance and operations adopted by the taxing unit for the preceding two years;
10. In the case of a taxing unit other than a school district, the tax rate for debt service adopted by the taxing unit for the preceding two years;
11. The tax rate for maintenance and operations proposed by the taxing unit for the current year;
12. In the case of a taxing unit other than a school district, the tax rate for debt service proposed by the taxing unit for the current year; and
13. The most recent financial audit of the taxing unit.

Tax Code 26.18

Tax Information to
County

The county assessor-collector for each county shall post on the internet website maintained by the county the following information for the most recent five tax years for each taxing unit all or part of the territory of which is located in the county: the adopted tax rate, the maintenance and operations rate, the debt rate, the no-new-revenue tax rate, the no-new-revenue maintenance and operations rate, and the voter-approval tax rate.

A taxing unit all or part of the territory of which is located in a county shall provide the information described above pertaining to the taxing unit to the county assessor-collector annually following the adoption of a tax rate by the taxing unit for the current tax year.

Tax Code 26.16(a)–(b)

Property Tax
Database

In accordance with Tax Code 26.17, the chief appraiser of each appraisal district shall create and maintain a property tax database.

The officer or employee designated by the governing body of each taxing unit in which the property is located to calculate the no-new-

revenue tax rate and the voter-approval tax rate for the taxing unit must electronically incorporate into the database:

1. The information described by Tax Code 26.17(b)(5), (6), (7), (12), and (13), as applicable, as the information becomes available; and
2. The tax rate calculation forms prepared under Tax Code 26.04(d-1) at the same time the designated officer or employee submits the tax rates to the governing body of the taxing unit under Tax Code 26.04(e).

Tax Code 26.17(a), (e)

**Branch Campus
Maintenance Tax**

In accordance with Education Code 130.253, the governing body of a school district or a county may levy a junior college district branch campus maintenance tax at a rate not to exceed five cents on each \$100 valuation of all taxable property in its jurisdiction.

The proceeds of the junior college district branch campus maintenance tax may be used only as follows:

1. To operate and maintain a branch campus and support its programs and services in the area of the political subdivision that levied the tax; and
2. Under an agreement by the applicable junior college district and the political subdivision levying the tax, to make lease payments to the political subdivision for facilities used exclusively by the branch campus that are owned by the political subdivision.

Education Code 130.253(a), (k)

**Local Steering
Committee**

A local group of citizens interested in establishing a branch campus maintenance tax jurisdiction shall appoint a steering committee of at least seven citizens to provide leadership on behalf of the tax effort. The steering committee shall be composed of a cross-section of the population of the area, with representation from major civic groups and business and industry. A chair, co-chair, and secretary shall be appointed, along with any other officers who may be of assistance to the committee. Where the proposed branch campus maintenance tax jurisdiction is to be located in an independent school district, the district board of trustees may serve as the steering committee.

The steering committee shall:

1. Serve as liaison between the local community, the college district which would operate the branch campus, and the Coordinating Board;

2. Be responsible for conducting a feasibility study and a survey of the needs and potential of the area for a branch campus;
3. Provide information to the community, which at a minimum, describes the nature and purpose of a branch campus;
4. Summarize and evaluate the results of the feasibility study and survey and formulate conclusions for submission to the commissioner;
5. Prepare and circulate a petition to obtain not fewer than five percent of the qualified voters of the proposed branch maintenance tax jurisdiction; and
6. Present the appropriately signed petition as set out in 19 Administrative Code 8.30(a) to appropriate authorities for certification in compliance with Education Code 130.087.

19 TAC 8.93

Application
Procedures

The steering committee and the community college district that is planning the branch campus shall jointly file a letter of intent with the commissioner as soon as practical. The staff of the Coordinating Board shall offer advice and technical assistance to the steering committee under the direction of the commissioner on procedures and requirements. *19 TAC 8.94*

Local Feasibility
Study and Survey

A local feasibility study consisting of a survey of need, potential student clientele, financial ability of the jurisdiction, and other pertinent data must be carried out under the auspices of the steering committee and the college which shall operate the branch campus. This feasibility study may be conducted either by the steering committee or by professionals.

The Coordinating Board staff shall offer advice and technical assistance to the steering committee under the direction of the commissioner. When the feasibility study is conducted by a professional individual or research organization, the steering committee shall fully advise the commissioner prior to initiating the study.

The feasibility study shall be made in consultation with the Coordinating Board staff and, upon completion, be submitted to the commissioner. The commissioner, in consultation with Coordinating Board staff, shall determine if further documentation or clarification is needed to supplement the information presented in the feasibility study.

The feasibility study shall be reviewed by the Coordinating Board, along with other information it deems appropriate, in determining

whether the criteria as set out in 19 Administrative Code 8.89 (relating to Standards and Board Procedure for Approval) have been met.

19 TAC 8.95

Petition

In counties with a population of more than 150,000, the steering committee shall be responsible for the circulation of a petition for authorization of an election to levy a public community college branch campus maintenance tax. At a minimum, the petition shall include the maintenance tax limits that shall appear on the ballot in the event an election is authorized. For counties with a population of 150,000 or less or an independent school district within a county with a population of 150,000 or less, no petition to propose an election for a branch campus maintenance tax is required to be submitted to the Coordinating Board.

The petition must incorporate all requirements as set forth in Election Code Chapter 277. After the petition has been circulated among the electorate and has been signed by not less than five percent of the qualified electors of the proposed branch maintenance tax jurisdiction, the petition shall be presented to the appropriate authorities who have the duty of verifying the legality of the petition.

Upon submission of a petition for an election to authorize a branch campus maintenance tax to a governing body of an independent school district or county, the governing body may propose an election and submit to the commissioner a feasibility study and survey. Upon approval by the commissioner, the governing body may enter an order for an election.

The governing body of a county with a population of 150,000 or less or an independent school district within a county with a population of 150,000 or less, on completion and approval of the feasibility study and survey by the commissioner, on its own motion and without presentation and approval of a certified petition to the Coordinating Board may order an election to authorize a branch campus maintenance tax. The governing body of an independent school district or county, notwithstanding 19 Administrative Code 8.98(b), shall present a certified petition to the commissioner who shall then present it to the Coordinating Board for approval or disapproval.

After the petition and any additional documentation or information are presented to the commissioner, a minimum of 45 days must elapse between the date on which the petition and supporting doc-

uments are received by the commissioner and the quarterly meeting of the Coordinating Board when the Coordinating Board will consider the petition.

19 TAC 8.96–.98

Coordinating Board
Approval

Education Code 130.253 requires the Coordinating Board to determine that:

1. The branch campus maintenance tax rate does not exceed five cents on each \$100 valuation of all taxable property;
2. A certified petition has been submitted by the appropriate authorities to the Coordinating Board; and
3. The proposed tax is feasible and desirable.

Education Code 130.253(c); 19 TAC 8.99(a)

Criteria

The Coordinating Board shall apply the following criteria when considering the appropriateness for the levying of a branch campus maintenance tax:

1. Demographic and economic characteristics of the jurisdiction seeking to establish the maintenance tax, such as:
 - a. Population trends by age group;
 - b. Economic development trends and projection; and
 - c. Employment trends and projection (i.e., supply-demand data).
2. Potential student clientele, including:
 - a. Educational levels by age group; and
 - b. College-bound data (i.e., trends by age group).
3. The financial status of the proposed jurisdiction to be taxed and the state as a whole, including:
 - a. Any projected growth or decline in the tax base; and
 - b. Trends in state appropriations for community/junior colleges and other institutions of higher education.
4. Projected programs and services for the proposed jurisdiction based on economic and population trends.
5. Proximity and impediments to programs and services to existing institutions of higher education such as:

- a. Identification of institutions that could be affected by a new branch campus;
- b. Documentation of existing programs and services:
 - (1) On the campuses of nearby institutions of higher education;
 - (2) Available to citizens within a 50-mile radius of the proposed jurisdiction; and
 - (3) Offered in the proposed jurisdiction by existing institutions of higher education.
- c. Financial limitations on existing institutions of higher education inhibiting the offering of programs and services in the proposed jurisdiction;
- d. Availability of facilities, libraries, and equipment for institutions to offer classes in the proposed jurisdiction;
- e. Distance and traffic patterns to existing institutions of higher education;
- f. Effect on enrollments of existing institutions of higher education; and
- g. Effect on financing of existing institutions of higher education.

Education Code 130.253(c); 19 TAC 8.99(b)

Public Hearings

A Coordinating Board committee may conduct one or more public hearings in the proposed jurisdiction to:

- 1. Assess public sentiment regarding the levying of a branch campus maintenance tax;
- 2. Determine whether programs in the proposed jurisdiction would create unnecessary duplication or seriously harm programs in existing community/junior college districts or other institutions of higher education in the area; and
- 3. Assess the potential impact of the proposed jurisdiction on existing community/junior colleges or other institutions of higher education in the area and on the state of Texas.

Education Code 130.253(c); 19 TAC 8.99(c)

Recommendation

After the self-study has been reviewed and, if applicable, a site visit conducted by a Coordinating Board committee and Coordinating Board staff, a report from the Coordinating Board staff shall be submitted to the commissioner indicating whether the criteria as set

out above have been met. The report shall include a recommendation for approval or denial of the request for approval to hold an election to levy a branch campus maintenance tax, but shall not be binding on the commissioner or the Coordinating Board.

Coordinating Board action on the request for approval to hold an election to levy a branch campus maintenance tax shall be taken at the next quarterly Coordinating Board meeting. In making its decision, the Coordinating Board shall consider the needs of the community/junior college, the needs of the community or communities served by the branch campus maintenance tax jurisdiction, and the welfare of the state as a whole. A resolution shall be entered in the minutes of the board and conveyed in writing by the commissioner to the governing board of the community/junior college district.

Education Code 130.253(c); 19 TAC 8.99(d), .100

Election

If the Coordinating Board approves the establishment of the branch campus maintenance tax, the governing body of the school district or county shall enter an order for an election to be held in the territory under its jurisdiction not less than 20 days nor more than 60 days after the date on which the order is entered to determine whether the branch campus maintenance tax may be levied. In the case of the joint school district or joint county elections, by mutual agreement of the governing bodies, the elections shall be held on the same date throughout the jurisdictions.

The president of the governing board of the school district or the county judge, as applicable, shall give notice of the election in the manner provided by law for notice by the county judge of general elections.

A majority of the electors in the proposed branch campus maintenance tax jurisdiction voting in the election shall determine the question of the creation of the branch campus maintenance tax jurisdiction submitted in the order.

19 TAC 8.101–.102

Resubmission of Applications

Should an election to create a branch campus maintenance tax jurisdiction fail, a period of 12 months must elapse before resubmission of the proposition to the Coordinating Board. The Coordinating Board shall require a strong showing of need and unusual circumstances before approving resubmission before the 12 months have elapsed. *19 TAC 8.103*

Tax Exemptions

**Homestead
Exemptions**

An individual who is disabled or is 65 or older is entitled to an exemption from taxation by a taxing unit of a portion, the amount of which is fixed as provided by Tax Code 11.13(e), of the appraised value of the individual's residence homestead if the exemption is adopted either:

1. By the governing body of the taxing unit; or
2. By a favorable vote of a majority of the qualified voters of the taxing unit at an election called by the governing body of a taxing unit, and the governing body shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the taxing unit.

The amount of an exemption adopted is \$3,000 of the appraised value of the residence homestead unless a larger amount is specified by the governing body authorizing the exemption as described at item 1 or the petition for the election if the exemption is authorized as described at item 2.

Once authorized, an exemption adopted as provided in this section may be repealed or decreased or increased in amount by the governing body of the taxing unit or by the procedure authorized by item 2 above. In the case of a decrease, the amount of the exemption may not be reduced to less than \$3,000 of the market value.

Tax Code 11.13(d)–(f)

*Application for
Exemption*

To receive the residence homestead exemption, a person claiming the exemption must apply for the exemption. *Tax Code 11.43(a)*

*Homesteads
Rendered
Uninhabitable or
Unusable*

If a qualified residential structure for which the owner receives a homestead exemption under Tax Code 11.13 is rendered uninhabitable or unusable by a casualty or by wind or water damage, the owner may continue to receive the exemption for the structure and the land and improvements used in the residential occupancy of the structure while the owner constructs a replacement qualified residential structure on the land in accordance with Tax Code 11.135 and 11.26(n)–(o) and 34 Administrative Code 9.416. *Tax Code 11.135, .26(n)–(o); 34 TAC 9.416*

*Disabled
Veterans and
Their Families*

Portion of
Assessed Value

Pursuant to Tax Code 11.22, a disabled veteran and, if that person dies, the person's unmarried surviving spouse or unmarried children, is entitled to an exemption from taxation of a portion of the assessed value of a property the veteran owns and designates in accordance with Tax Code 11.22(f). *Tax Code 11.22*

Owned
Residence

*Donated
Residence*

A disabled veteran who has a disability rating of less than 100 percent is entitled to an exemption from taxation of a percentage of the appraised value of the disabled veteran's residence homestead equal to the disabled veteran's disability rating if the residence homestead was donated to the disabled veteran by a charitable organization:

1. At no cost to the disabled veteran; or
2. At some cost to the disabled veteran in the form of a cash payment, a mortgage, or both in an aggregate amount that is not more than 50 percent of the good faith estimate of the market value of the residence homestead made by the charitable organization as of the date the donation is made.

The surviving spouse of a disabled veteran who qualified for the exemption of a percentage of the appraised value of the disabled veteran's residence homestead when the disabled veteran died is entitled to an exemption in accordance with Tax Code 11.132.

Tax Code 11.132(b)–(c)

*Total Appraised
Value*

A disabled veteran who ~~receives from~~ **has been awarded by** the U.S. Department of ~~Veterans'~~ **Veterans** Affairs or its successor 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability is entitled to an exemption from taxation of the total appraised value of the veteran's residence homestead.

The surviving spouse of a disabled veteran who qualified for an exemption under Tax Code 11.131(b) when the disabled veteran died, or of a disabled veteran who would have qualified for an exemption under Section 11.131(b) if Section 11.131(b) had been in effect on the date the disabled veteran died, is entitled to an exemption from taxation of the total appraised value of the same property to which the disabled veteran's exemption applied, or to which the disabled veteran's exemption would have applied if the exemption had been authorized on the date the disabled veteran died, if the surviving spouse has not remarried since the death of the disabled veteran; and the property:

1. Was the residence homestead of the surviving spouse when the disabled veteran died; and
2. Remains the residence homestead of the surviving spouse.

If a surviving spouse who qualifies for an exemption under Tax Code 11.131(c) subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is

	entitled to an exemption from taxation of the subsequently qualified homestead in accordance with Tax Code 11.131(d).
	<i>Tax Code 11.131(b)–(d)</i>
<i>Surviving Spouse of Armed Services Member Killed in Action</i>	The surviving spouse of a member of the armed services of the United States who is killed in action is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead in accordance with Tax Code 11.133. <i>Tax Code 11.133</i>
<i>Surviving Spouse of First Responder Killed in Line of Duty</i>	The surviving spouse of a first responder listed in Government Code 615.003 who is killed or fatally injured in the line of duty is entitled to an exemption from taxation of the total appraised value of the surviving spouse's residence homestead in accordance with Tax Code 11.134. <i>Tax Code 11.134</i>
Exemption for Property Damaged by a Disaster	A person is entitled to an exemption from taxation by a taxing unit of a portion of the appraised value of qualified property that the person owns in an amount determined under Tax Code 11.35(h). <i>Tax Code 11.35(b)</i>
<i>Exception</i>	~~If the governor first declares territory in a taxing unit to be a disaster area as a result of a disaster on or after the date a taxing unit adopts a tax rate for the tax year in which the declaration is issued, a person is not entitled to the exemption for that tax year unless the governing body of the taxing unit adopts the exemption in the manner provided by law for official action by the body.~~ ~~An exemption adopted by the governing body of a taxing unit must specify the disaster to which the exemption pertains and be adopted not later than the 60th day after the date the governor first declares territory in the taxing unit to be a disaster area as a result of the disaster.~~ ~~A taxing unit the governing body of which adopts an exemption shall, not later than the seventh day after the date the governing body adopts the exemption, notify the chief appraiser of each appraisal district in which the taxing unit participates, the assessor for the taxing unit, and the comptroller of the adoption of the exemption.~~ ~~<i>Tax Code 11.35(c)–(e)</i>~~
<i>Application for Exemption</i>	A person who qualifies for an exemption under this section must apply for the exemption in accordance with Tax Code 11.43(s). <i>Tax Code 11.43(s)</i>
<i>Expiration of Exemption</i>	The exemption authorized by this section expires as to an item of qualified property on January 1 of the first tax year in which the property is reappraised under Tax Code 25.18. <i>Tax Code 11.35(k)</i>

*Qualified
Property*

"Qualified property" means property that:

1. Consists of tangible personal property used for the production of income; an improvement to real property; or a manufactured home as that term is defined by Occupations Code 1201.003 that is used as a dwelling, regardless of whether the owner of the manufactured home elects to treat the manufactured home as real property under Occupations Code 1201.2055;
2. Is located in an area declared by the governor to be a disaster area following a disaster;
3. Is at least 15 percent damaged by the disaster, as determined by the chief appraiser under Tax Code 11.35; and
4. For property described by item 1, is the subject of a rendition statement or property report filed by the property owner under Tax Code 22.01 that demonstrates that the property had taxable situs in the disaster area for the tax year in which the disaster occurred.

Tax Code 11.35(a)

Goods-in-Transit

A person is entitled to an exemption from taxation of the appraised value of that portion of the person's property that consists of goods-in-transit. *Tax Code 11.253(b)*

In accordance with Tax Code 11.253, the governing body of a taxing unit, in a manner required for official action by the governing body, may provide for the taxation of goods-in-transit exempt as set out above and not exempt under other law. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body must conduct a public hearing as required by Texas Constitution Article VIII, Section 1-n(d). The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit, or otherwise determines that the exemption prescribed above will apply to that taxing unit. *Tax Code 11.253(j)*

Notwithstanding ~~the Section~~ **Tax Code** 11.253(j) or official action that was taken before October 1, 2011, to tax goods-in-transit under the above exemption, a taxing unit may not tax such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes official action on or after October 1, 2011, in the manner required for official action by the

	board, to provide for the taxation of the goods-in-transit. <i>Tax Code 11.253(j-1)</i>
<i>Exception</i>	If the governing body of the taxing unit, before October 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, the tax officials of the taxing unit may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created. <i>Tax Code 11.253(j-2)</i>
<i>Extension for Property in Disaster Area</i>	This provision applies only to a taxing unit any part of which is located in an area designated a disaster area by a disaster declaration issued under Government Code 418.040 or 418.108 on or after January 1, 2020. The governing body of a taxing unit, in the manner provided by law for official action, may extend the date by which goods-in-transit must be transported to another location in this state or outside this state to a date not later than the 270th day after the date the person acquired the property in or imported the property into this state. An extension adopted by official action under this provision applies only to the exemption from ad valorem taxation by the taxing unit adopting the extension and the tax year in which the extension is adopted. <i>Tax Code 11.253(l)</i>
Additional Exemptions	A taxing unit is required or permitted, as applicable, to grant additional tax exemptions as provided by law. <i>Tex. Const. Art. VIII, Sec. 1-b; Tax Code Chapter 11, Subchapter B</i>
Notice of Optional Exemption	If a taxing unit adopts, amends, or repeals an exemption that the unit by law has the option to adopt or not, the taxing unit shall notify the appraisal office of its action and of the terms of the exemption within 30 days after the date of its action. <i>Tax Code 6.08</i>
Tax Payments	
Discounts	The governing body of a taxing unit may adopt one of the discounts described below, or both, in the manner required by law for official action by the body. <i>Tax Code 31.05(a)</i>
<i>Option 1</i>	A taxing unit may adopt the following discounts to apply regardless of the date of which it mails its tax bills: 1. Three percent if the tax is paid in October or earlier; 2. Two percent if the tax is paid in November; and 3. One percent if the tax is paid in December. This discount does not apply to taxes that are calculated too late for it to be available.

Tax Code 31.04(c), .05(b)

Option 2

A taxing unit may adopt the following discounts to apply when it mails its tax bills after September 30:

1. Three percent if the tax is paid before or during the next full calendar month following the date on which the tax bills were mailed;
2. Two percent if the tax is paid during the second full calendar month following the date on which the tax bills were mailed; and
3. One percent if the tax is paid during the third full calendar month following the date on which the tax bills were mailed.

Tax Code 31.05(c)

Both Options

If a taxing unit adopts both discounts, the discounts described at Option 1 apply unless the tax bills for the unit are mailed after September 30, in which case only the discounts described at Option 2 apply. *Tax Code 31.05(a)*

Rescission

The governing body of a taxing unit may rescind a discount adopted by the governing body in the manner required by law for official action by the body. The rescission of a discount takes effect in the tax year following the year in which the discount is rescinded. *Tax Code 31.05(d)*

Split Payment

The governing body of a taxing unit that collects its own taxes may provide, in a manner required by law for official action by the body, that a person who pays one-half of the unit's taxes before December 1 may pay the remaining one-half of the taxes without penalty or interest before July 1 of the following year. The split-payment option, if adopted, applies to taxes for all units for which the adopting taxing unit collects taxes.

If one or more taxing units contract with the appraisal district for collection of taxes, the split-payment option does not apply to taxes collected by the district unless approved by resolution adopted by a majority of the governing bodies of the taxing units whose taxes the district collects and filed with the secretary of the appraisal district board of directors. After an appraisal district provides for the split-payment option, the option applies to all taxes collected by the district until revoked. It may be revoked in the same manner as provided for adoption.

This payment option does not apply to taxes that are calculated too late for it to be available.

Tax Code 31.03, .04(c)

*In Certain
Counties*

The governing body of a taxing unit located in a county having a population of not less than 285,000 and not more than 300,000 that borders a county having a population of 3.3 million or more and the Gulf of Mexico that has its taxes collected by another taxing unit that has adopted the split-payment option may provide that the split-payment option does not apply to the taxing unit's taxes collected by the other taxing unit. *Tax Code 31.03(d)*

Installment
Payments
*Certain
Homesteads*

This section applies only to an individual who is disabled or at least 65 years of age and qualified for an exemption under Tax Code 11.13(c) or an individual who is a disabled veteran or the unmarried surviving spouse of a disabled veteran and qualified for an exemption under 11.132 or 11.22. Subject to Tax Code 31.031, an individual to whom this section applies may pay a taxing unit's taxes imposed on property that the person owns and occupies as a residence homestead in four equal installments without penalty or interest if the first installment is before the delinquency date and is accompanied by notice that the individual will pay the remaining taxes in three equal installments. If the delinquency date is February 1, the second installment must be paid before April 1, the third installment must be paid before June 1, and the fourth installment must be paid before August 1. If the delinquency date is a date other than February 1, the second installment must be paid before the first day of the second month after the delinquency date, the third installment must be paid before the first day of the fourth month after the delinquency date, and the fourth installment must be paid before the first day of the sixth month after the delinquency date.

Notwithstanding the deadline prescribed above for payment of the first installment, an individual to whom this section applies may pay the taxes in four equal installments as provided above if the first installment is paid and the required notice is provided before the first day of the first month after the delinquency date.

Tax Code 31.031(a)-(a-2)

~~Partial Payments~~

~~A tax collector may adopt a policy of accepting partial payments of property taxes. Acceptance of a partial payment does not affect the date that the tax becomes delinquent, but the penalties and interest provided by Tax Code 33.01 are incurred only by the portion of tax that remains unpaid on the date the tax becomes delinquent. A payment option provided by Tax Code 31.03 or a discount adopted under Tax Code 31.05 does not apply to any portion of a partial payment. Tax Code 31.07(c)~~

***Damaged
Property in a
Disaster or
Emergency Area***

This section applies to:

1. Real property that:
 - a. Is the residence homestead of the owner or consists of property that is used for residential purposes and that has fewer than five living units or is owned or leased by a business entity that had not more than the amount calculated as provided by Tax Code 31.032(h) in gross receipts in the entity's most recent federal tax year or state franchise tax annual period, according to the applicable federal income tax return or state franchise tax report of the entity;
 - b. ~~-Is located in a disaster area~~ **or emergency area**; and
 - c. ~~-Has been damaged as a direct result of the disaster;~~ **or emergency**;
2. Tangible personal property that is owned or leased by a business entity described above at ~~item 1(a);~~ **paragraph 1a**; and
3. Taxes that are imposed on the property by a taxing unit before the first anniversary of the disaster **or emergency**.

A person may pay a taxing unit's taxes imposed on property that the person owns in four equal installments without penalty or interest if the first installment is paid before the delinquency date and is accompanied by notice to the taxing unit that the person will pay the remaining taxes in three equal installments in accordance with Tax Code 31.032.

Notwithstanding the deadline prescribed above for payment of the first installment, a person to whom this section applies may pay the taxes in four equal installments as provided above if the first installment is paid and the required notice is provided before the first day of the first month after the delinquency date.

Tax Code 31.032(a)–(b-1)

***Undamaged
Property in a
Disaster or
Emergency Area***

This section applies to:

1. Real property that:
 - a. **Is owned or leased by a business entity that had not more than the amount calculated as provided by Tax Code 31.032(h) in gross receipts in the entity's most recent federal tax year or state franchise tax annual period, according to the applicable federal income tax return or state franchise tax report of the entity;**
 - b. **Is located in a disaster area or emergency area; and**

- c. Has not been damaged as a direct result of the disaster or emergency;
2. Tangible personal property that is owned or leased by a business entity described above at paragraph 1a; and
3. Taxes that are imposed on the property by a taxing unit before the first anniversary of the disaster or emergency.

The governing body of a taxing unit may authorize a person to pay the taxing unit's taxes imposed on property that the person owns in installments in accordance with Tax Code 31.032(b)–(d).

Tax Code 31.033(b)–(c)

Partial Payments

A tax collector may adopt a policy of accepting partial payments of property taxes. Acceptance of a partial payment does not affect the date that the tax becomes delinquent, but the penalties and interest provided by Tax Code 33.01 are incurred only by the portion of tax that remains unpaid on the date the tax becomes delinquent. A payment option provided by Tax Code 31.03 or a discount adopted under Tax Code 31.05 does not apply to any portion of a partial payment. Tax Code 31.07(c)

Performing Services
in Lieu of Paying
Taxes

In accordance with Tax Code 31.035, the governing body of a taxing unit may permit an individual who is at least 65 years of age to perform service to the taxing unit in lieu of paying property taxes imposed by the taxing unit on property owned by the individual and occupied as the individual's residence homestead. While performing service for the taxing unit, the property owner is not an employee of the taxing unit and is not entitled to any benefit, including workers' compensation coverage, that the taxing unit provides to an employee of the taxing unit. *Tax Code 31.035(a), (f)*

Delinquency Date

Taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed, except as provided below:

1. The taxing unit has provided for split payments, as described above. *Tax Code 31.03*
2. The taxing unit's tax bills are mailed after January 10. *Tax Code 31.04(a)*
3. The taxing unit's tax bills are mailed after September 30 and the taxing unit has adopted discounts provided by Tax Code 31.05(c). *Tax Code 31.04(d)*

4. A person who owns any interest in the property is an eligible person serving on active duty in any branch of the U.S. armed forces as provided by Tax Code 31.02(b).

Tax Code 31.02

Delinquent Tax
Collection

The governing body of a taxing unit may contract with any competent attorney to represent the unit to enforce the collection of delinquent taxes. The attorney's compensation is set in the contract, but the total amount of compensation provided may not exceed 20 percent of the amount of delinquent tax, penalty, and interest collected. *Tax Code 6.30(c)*

Penalties and
Interest

Delinquent taxes incur penalties and accrue interest in accordance with Tax Code 33.01, subject to any waiver by the board pursuant to Tax Code 33.011.

Additional Penalties

A taxing unit or appraisal district may provide, in the manner required by law for official action by the body, that taxes that become delinquent on or after February 1 but not later than May 1 of that year and remain delinquent on July 1 of the year in which they become delinquent incur an additional penalty to defray costs of collection, if the unit or district or another unit that collects taxes for the unit has contracted with a private attorney for the collection of delinquent taxes pursuant to Tax Code 6.30. The amount of the penalty may not exceed the amount of the compensation specified in the contract with the attorney to be paid in connection with the collection of the delinquent taxes. A tax lien attaches to the property on which the tax is imposed to secure payment of the penalty. If a taxing unit or appraisal district provides for a penalty under this section, the collector shall deliver notice of the delinquency and of the penalty to the property owner at least 30 and not more than 60 days before July 1.

If the governing body of the taxing unit or appraisal district has imposed the penalty for collection costs described above and the taxing unit or appraisal district, or another taxing unit that collects taxes for the unit, has entered into a contract with an attorney under Tax Code 6.30 for collection of delinquent taxes, the governing body of the taxing unit or appraisal district, in a manner required by law for official action, may provide that taxes that become delinquent on or after June 1 under Tax Code 26.07(~~075(j)~~), 26.15(e), 31.03, 31.031, 31.032, **31.033**, 31.04, or 42.42 incur an additional penalty to defray costs of collection. The amount of the penalty may not exceed the amount of compensation specified in the contract with the attorney to be paid in connection with the collection of the delinquent taxes. A tax lien attaches to the property on which the tax is imposed to secure payment of the additional penalty. After the taxes become delinquent, the collector for a taxing unit or

appraisal district that has provided for the additional penalty shall send a notice of the delinquency and the penalty to the property owner. The penalty is incurred on the first day of the first month that begins at least 21 days after the date the notice is sent.

Tax Code 33.07-.08

Participation

An appraisal district is established in each county. The appraisal district is responsible for appraising property in the appraisal district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the appraisal district. *Tex. Const. Art. VIII, 18(b); Tax Code 6.01(a)–(b)*

**Appraisal District
Board of Directors**

Eligibility

The appraisal district is governed by a board of directors. Five directors are appointed by the taxing units that participate in the appraisal district as provided by Tax Code 6.03.

To be eligible to serve on the appraisal district board of directors, an individual other than a county assessor-collector serving as a nonvoting director must be a resident of the appraisal district and must have resided in the appraisal district for at least two years immediately preceding the date the individual takes office. An individual who is otherwise eligible to serve on the appraisal district board is not ineligible because of membership on the governing body of a taxing unit.

An employee of a taxing unit that participates in the appraisal district is not eligible to serve on the board of directors unless the individual is also a member of the governing body or an elected official of a taxing unit that also participates in the appraisal district.

Tax Code 6.03(a)

Restrictions

*Nepotism and
Delinquent Taxes*

An individual is ineligible to serve on an appraisal district board of directors and is disqualified from employment as chief appraiser if the individual:

1. Is related within the second degree by consanguinity or affinity, as determined under Government Code Chapter 573, Subchapter B [see DBE], to an individual who is engaged in the business of appraising property for compensation for use in proceedings under the Tax Code or of representing property owners for compensation in proceedings relating to property taxes in the appraisal district; or
2. Owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless the delinquent taxes and any penalties and interest are being paid under an installment payment agreement under Tax Code 33.02 or a suit to collect the delinquent taxes is deferred or abated under Tax Code 33.06 or 33.065.

Tax Code 6.035(a)

*Prior Service or
Involvement with
~~Past~~ Appraisals*

An individual is ineligible to serve on **the board of directors** of an appraisal district ~~board of directors~~ if the individual ~~has~~:

1. **Has served as a member of the board of directors for all or part of five terms, unless the individual was the county assessor-collector at the time the individual served as a board member or the appraisal district is established in a county with a population of less than 120,000;**
2. **Has** engaged in the business of appraising property for compensation for use in proceedings under the Tax Code ~~or at~~ **any time during the preceding three years;**
3. **Has engaged in the business** of representing property owners for compensation in proceedings under the Tax Code in the appraisal district at any time during the preceding three years. ~~Tax Code 6.035(a-1); or~~
4. **Has been an employee of the appraisal district at any time during the preceding three years.**

Tax Code 6.035(a-1)

*Conflict of
Interest*

An individual is not eligible to be appointed to or to serve on the board of directors of an appraisal district if the individual or a business entity in which the individual has a substantial interest is a party to a contract with:

1. The appraisal district; or
2. A taxing unit that participates in the appraisal district, if the contract relates to the performance of an activity governed by the Tax Code.

An individual has a substantial interest in a business entity if the combined ownership of the individual and the individual's spouse is at least ten percent of the voting stock or shares of the business entity or the individual or the individual's spouse is a partner, limited partner, or officer of the business entity.

"Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.

Tax Code 6.036

Recall

The governing board of a taxing unit may call for the recall of a member of the board of directors of an appraisal district appointed under Tax Code 6.03 for whom the unit cast any of its votes in the appointment of the board of directors. The call must be in the form

of a resolution, be filed with the chief appraiser of the appraisal district, and state that the unit is calling for a recall of the member. *Tax Code 6.033(a)*

Terms

The taxing units participating in an appraisal district may provide that the terms of the appointed members of the appraisal district board of directors be staggered if the governing bodies of at least three-fourths of the taxing units that are entitled to vote on the appointment of appraisal district board members adopt resolutions providing for the staggered terms. *Tax Code 6.034(a)*

**Appraisal District
Employment
Restriction**

An individual may not be employed by an appraisal district if the individual ~~is~~:

1. ~~An~~ **is an** officer of a taxing unit that participates in the appraisal district; ~~or~~
2. ~~An~~ **is an** employee of a taxing unit that participates in the appraisal district; **or**
- ~~2.~~ **3. Has served as a member of the appraisal review board for the appraisal district at any time during the preceding two years.**

Tax Code 6.054

Appraisal Office

The board of directors of an appraisal district may contract with an appraisal office in another appraisal district or with a taxing unit in the appraisal district to perform the duties of the appraisal office for the appraisal district. *Tax Code 6.05(b)*

**Ownership or Lease
of Real Property**

The acquisition or conveyance of real property or the construction or renovation of a building or other improvement by an appraisal district must be approved by the governing bodies of three-fourths of the taxing units entitled to vote on the appointment of appraisal district board members.

The appraisal district board of directors by resolution may propose a property transaction or other action for which Tax Code 6.051 requires approval of the taxing units. The chief appraiser shall notify the presiding officer of each governing body entitled to vote on the approval of the proposal by delivering a copy of the appraisal district board's resolution, together with information showing the costs of other available alternatives to the proposal.

On or before the 30th day after the date the presiding officer receives notice of the proposal, the governing body of a taxing unit by resolution may approve or disapprove the proposal. If a governing body fails to act on or before that 30th day or fails to file its resolution with the chief appraiser on or before the tenth day after that

30th day, the proposal is treated as if it were disapproved by the governing body.

Tax Code 6.051(b)

Proceeds

The appraisal district's board of directors may convey real property owned by the district, and the proceeds shall be credited to each taxing unit that participates in the appraisal district in proportion to the unit's allocation of the appraisal district budget in the year in which the transaction occurs. *Tax Code 6.051(c)*

**Budget and
Financing**

Each year the chief appraiser shall prepare a proposed budget for the operations of the appraisal district for the following tax year as described in Tax Code 6.06(a) and shall submit copies to each taxing unit participating in the appraisal district and to the appraisal district board of directors before June 15. *Tax Code 6.06(a)*

Public Posting

Each taxing unit entitled to vote on the appointment of appraisal district board members shall maintain a copy of the proposed budget for public inspection at its principal administrative office. *Tax Code 6.06(a)*

Budget Adoption

The appraisal district board of directors shall hold a public hearing to consider the budget. The secretary of the appraisal district board shall deliver to the presiding officer of the governing body of each taxing unit participating in the appraisal district not later than the tenth day before the date of the hearing a written notice of the date, time, and place fixed for the hearing. The appraisal district board of directors shall complete its hearings, make any amendments to the proposed budget it desires, and finally approve a budget before September 15.

If governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district board members adopt resolutions disapproving a budget and file them with the secretary of the appraisal district board within 30 days after its adoption, the budget does not take effect, and the appraisal district board shall adopt a new budget within 30 days of the disapproval.

Tax Code 6.06(b)

Amendments

The appraisal district board may amend the approved budget at any time, but the secretary of the appraisal district board must deliver a written copy of a proposed amendment to the presiding officer of the governing body of each taxing unit participating in the appraisal district not later than the 30th day before the date the appraisal district board acts on it. *Tax Code 6.06(c)*

Allocation	Each taxing unit participating in the appraisal district is allocated a portion of the amount of the budget and must pay its allocation as provided by Tax Code 6.06. <i>Tax Code 6.06(d)</i>
Changes in Method of Financing	The board of directors of an appraisal district, by resolution adopted and delivered to each taxing unit participating in the appraisal district after June 15 and before August 15, may prescribe a different method of allocating the costs of operating the appraisal district unless the governing body of any taxing unit that participates in the appraisal district adopts a resolution opposing the different method, and files it with the appraisal district board of directors before September 1. If an appraisal district board proposal is rejected, the appraisal district board shall notify, in writing, each taxing unit participating in the appraisal district before September 15. The taxing units participating in an appraisal district may adopt a different method of allocating the costs of operating the appraisal district in accordance with Tax Code 6.061. <i>Tax Code 6.061(a)–(b)</i>
Disapproval of Appraisal District Board Actions	If the governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district board members adopt resolutions disapproving an action, other than adoption of the budget, by the appraisal district board of directors and file them with the secretary of the appraisal district board within 15 days after the action is taken, the action is revoked effective the day after the day on which the required number of resolutions is filed. <i>Tax Code 6.10</i>
Prohibited Communications	A member of the governing body, officer, or employee of a taxing unit commits an offense if the person directly or indirectly communicates with the chief appraiser or another employee of the appraisal district in which the taxing unit participates for the purpose of influencing the value at which property in the district is appraised unless the person owns or leases the property that is the subject of the communication. <i>Tax Code 6.155</i>
Appraisal Review Boards	An appraisal review board is established for each appraisal district, unless the boards of directors of two or more adjoining appraisal districts provide for the operation of a consolidated appraisal review board by interlocal contract. ~~Except as provided in Tax Code 6.41(d-1), members~~ Members of the appraisal review board are appointed by ~~resolution of a majority of the local administrative district judge under Government Code Chapter 74, Subchapter D in the county in which the appraisal district~~ board of directors is established.

The board of directors of an appraisal district, by resolution of a majority of the members, may provide for a number of auxiliary appraisal review board members that the appraisal district board considers appropriate to hear taxpayer protests before the appraisal review board and to assist the board in performing its duties.

Members of the appraisal review board, including auxiliary members, are subject to the eligibility restrictions described in Tax Code 6.412, including prohibitions on service by college district board members, officers, and employees, and Tax Code 6.413, including prohibitions on service by individuals who are parties to certain contracts.

Tax Code 6.41, .412–.413, .414(a)–(b)

Exception

~~In a county with a population of 120,000 or more, the members of the appraisal review board are appointed by the local administrative district judge under Government Code, Chapter 74, Subchapter D in the county in which the appraisal district is established. Tax Code 6.41(d-1)~~

**Prohibition on
Contracts**

A taxing unit may not enter into a contract with a member of the appraisal review board established for an appraisal district in which the taxing unit participates or with a business entity in which a member of the appraisal review board has a substantial interest as defined in Tax Code 6.413. *Tax Code 6.413(c)*

**Challenge Before
Appraisal Review
Board**

A taxing unit is entitled to challenge before the appraisal review board:

1. An exclusion of property from the appraisal records;
2. A grant in whole or in part of a partial exemption;
3. A determination that land qualifies for appraisal as provided by Tax Code Chapter 23, Subchapter C, D, E, or H; or
4. Failure to identify the taxing unit as one in which a particular property is taxable.

Tax Code 41.03(a)

Authorization

A governing body of a sponsor, including a college district, that determines that it is in the public interest and to the benefit of the sponsor's residents and the citizens of this state that a corporation be created to finance, refinance, or provide the costs of public facilities of the sponsor may by resolution stating that determination authorize and approve the creation of a corporation to act on behalf of the sponsor and approve proposed articles of incorporation for the corporation as described by Local Government Code Chapter 303, Subchapter B. *Local Gov't Code 303.023*

Purpose

A sponsor may create one or more nonmember, nonstock, nonprofit public facility corporations to:

1. Issue bonds under Local Government Code Chapter 303, including bonds to purchase sponsor obligations;
2. Finance public facilities on behalf of the sponsor; or
3. Loan the proceeds of the obligations to other entities to accomplish the purposes of the sponsor.

Local Gov't Code 303.021(a)

Use of the Corporation

A sponsor may use the corporation to acquire, construct, rehabilitate, renovate, repair, equip, furnish, or place in service public facilities or to issue bonds on the sponsor's behalf to finance the cost of the public facilities. *Local Gov't Code 303.021(b)*

Status as a Public Facility Corporation

A corporation created under Local Government Code Chapter 303 must remain a public facility corporation under Chapter 303. *Local Gov't Code 303.021(c)*

**Financial Accounting
and Reporting**

The college district shall submit its audited annual financial report to the Coordinating Board by January 1st of each year. *19 TAC 13.62*

Financial Reports

Each community college shall provide to the Coordinating Board financial data related to the operation of each community college using the specific content and format prescribed by the Coordinating Board. Each community college shall provide the report no later than January 1st of each year. *General Appropriations Act, 86th 87th Leg., R.S., H.S.B. 1, III-213.216*

**Annual Financial
Statement**

The governing body of a junior college district shall prepare an annual financial statement showing for each fund subject to the authority of the governing body during the fiscal year:

1. The total receipts of the fund, itemized by source of revenue, including taxes, assessments, service charges, grants of state money, gifts, or other general sources from which funds are derived;
2. The total disbursements of the fund, itemized by the nature of the expenditure; and
3. The balance in each fund at the close of the fiscal year.

Local Gov't Code 140.005

**Publication and
Filing**

The presiding officer of a governing body shall submit the financial statement to a newspaper in each county in which the district or any part of the district is located. If a district is located in more than one county, the financial statement may be published in a newspaper that has general circulation in the district. If a newspaper is not published in the county, the financial statement may be published in a newspaper in an adjoining county.

A statement shall be published not later than two months after the date the fiscal year ends.

Local Gov't Code 140.006

**Annual Local Debt
Report**

A political subdivision, including a college district, shall annually compile and report certain financial information in the manner prescribed by this section. The Annual Local Debt Report to be compiled and reported by a political subdivision must include the following financial information:

1. Regarding total authorized debt obligations:
 - a. The amount of all authorized debt obligations;
 - b. The principal of all outstanding debt obligations;

- c. The combined principal and interest required to pay all outstanding debt obligations on time and in full;
 - d. The amount of all authorized debt obligations secured by property taxes;
 - e. The principal of all outstanding debt obligations secured by property taxes;
 - f. The combined principal and interest required to pay all outstanding debt obligations secured by property taxes on time and in full;
 - g. The combined principal and interest required to pay all outstanding debt obligations on time and in full for all obligations secured by property taxes expressed as a per capita amount; and
 - h. The current credit rating on total debt obligations given by any nationally recognized credit rating organization.
2. Regarding each authorized debt obligation:
- a. The principal of each outstanding debt;
 - b. The combined principal and interest required to pay each outstanding debt obligation on time and in full;
 - c. The issued and unissued amounts, the spent and unspent amounts, the maturity date and the stated purpose for which each debt obligation was authorized; and
 - d. The current credit rating on each debt obligation given by any nationally recognized credit rating organization.
3. Any other information considered relevant or necessary to explain the above required data elements, such as explanations of payment sources for different kinds of debt or projections of per capita amounts of ad valorem taxation-secured obligations as of the last day of the maximum term of the most recent debt obligation issued by the political subdivision.

Local Gov't Code 140.008(b); 34 TAC 10.2

Form

The comptroller shall provide a location on the comptroller's internet website where a political subdivision may submit the financial information described in 34 Administrative Code 10.2 and any other related information required or requested by the comptroller for the Annual Local Debt Report. The comptroller shall prescribe the form and manner in which financial information, financial documents, and related information must be submitted under 34 Administrative Code Chapter 10, Subchapter A. These instructions and

other information related to local government debt reporting will be provided on the [comptroller's internet website](#).¹

34 TAC 10.3

**Availability and
Posting**

On an annual basis, and within 180 days of the end of the most recently completed fiscal year, a political subdivision shall, in accordance with the reporting requirements set forth under Local Government Code 140.008, either:

1. Submit an Annual Local Debt Report to the comptroller as described in 34 Administrative Code 10.3, in the form and in the manner prescribed by the comptroller and, if the political subdivision maintains an internet website, continually maintain a link from its website to the location on the comptroller's website where the political subdivision's financial information may be viewed; or
2. Post its contact information and the information required in an Annual Local Debt Report on the political subdivision's own internet website and make the report available for inspection by any person in accordance with other law.

For fiscal year 2019 and fiscal year 2020, a political subdivision shall submit to the comptroller or post the annual debt information described in 34 Administrative Code 10.4(a) by the later of 180 days after the end of the respective fiscal year or 180 days after the effective date of Section 10.4, as amended.

A political subdivision that elects to post a report of its financial information on its own internet website as described in 34 Administrative Code 10.4(a)(2) shall provide upon request an electronic link to the location on the political subdivision's website where the information can be viewed to facilitate compliance with the requirements of Section 10.4(a) and to enable the comptroller to maintain a searchable database of local debt information that is comprehensive, accurate, and complete.

Local Gov't Code 140.008(c)–(d), (f); 34 TAC 10.4

**State Expenditure
Database**

A state agency, including a college district, is required to cooperate with and provide information to the comptroller as necessary to implement and administer the state expenditure database. A state agency is not required to record information or expend resources for the purpose of computer programming or other additional actions necessary to make information reportable under this section.

Each state agency that maintains a generally accessible internet site or for which a generally accessible internet site is maintained

shall include a link on the agency's internet site to the state expenditure database.

Gov't Code 403.024(g)–(h), 2054.126

**Publication of
Financial
Transactions**

Each institution of higher education, including each college district, shall post on the institution's internet website a copy of the institution's financial transactions to the extent necessary to provide, for each payment drawn from money appropriated from the state general revenue fund or received as student tuition or fee payments:

1. The amount of the payment;
2. The date of the payment;
3. A brief description of the purpose of the payment; and
4. The name of the payee.

An institution of higher education may comply by providing on the institution's internet website an easily noticeable direct link, the purpose of which is clearly identifiable, to an internet website maintained by the comptroller that provides information concerning the institution that is similar to the information required above.

Education Code 51.9741

¹ Comptroller's internet website: <https://comptroller.texas.gov/transparency/>

The comptroller of public accounts and the Coordinating Board jointly shall prescribe and periodically update a uniform system of financial accounting and reporting for institutions of higher education, including definitions of the elements of cost on the basis of which appropriations shall be made and financial records shall be maintained. The Coordinating Board may require institutions to report additional financial information as the board considers necessary. The accounts of the institutions shall be maintained and audited in accordance with the approved reporting system. *Education Code 61.065*

Annual Audit Report

A community college's bound and audited financial statements, in the quantity indicated, should be forwarded to each agency listed in Section 2.1 of the Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges manual by January 1st of each year and submitted electronically to the Coordinating Board. The audit must be certified by the auditor but does not need to be approved by the governing board before submission.

Each published audited financial report should include the items listed, arranged in the order as shown, in Section 2.2 of the manual.

[Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges \(PDF\)](#)⁴

[Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, Fiscal Year 2021 \(PDF\)](#)²

**Information from
State Auditor**

At a reasonable time in advance of an independent audit of a junior college district, the state auditor shall provide the presiding officer of the district's governing body and the chief executive officer of the district with written information relating to the procedures for and scope of the audit. The state auditor shall include in the materials information describing:

1. How the appropriate representatives of the district may participate in the audit planning process; and
2. How the district may request information or assistance in preparing for the audit from the state auditor.

Gov't Code 321.0137(a)

Publication

At the time and in the manner provided by the state auditor, a state agency, including a college district, shall post on the agency's internet website:

1. The agency's internal audit plan approved as provided by Government Code 2102.008; and
2. The agency's annual report required under Government Code 2102.009.

A state agency is not required to post information contained in the agency's internal audit plan or annual report if the information is excepted from public disclosure under the Texas Public Information Act, Government Code Chapter 552.

A state agency shall update the posting required under Government Code 2102.015 at the time and in the manner provided by the state auditor to include a detailed summary of the weaknesses, deficiencies, wrongdoings, or other concerns, if any, raised by the audit plan or annual report.

A state agency shall update the posting required under Section 2102.015 to include a summary of the action taken by the agency to address the concerns, if any, that are raised by the audit plan or annual report.

Gov't Code 2102.015

Each taxing unit shall maintain an internet website or have access to a generally accessible internet website that may be used for the purposes of this provision. Each taxing unit shall post or cause to be posted on the internet website in a format prescribed by the comptroller the information described by Tax Code 26.18, including the most recent financial audit of the taxing unit. [See CAI] *Tax Code 26.18*

¹ ~~Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges (PDF): <https://reportcenter.highered.texas.gov/agency-publication/guidelines-manuals/annual-financial-reporting-manual-for-texas-public-community-colleges-2020/>~~

² Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, Fiscal Year 2021 (PDF): <https://reportcenter.highered.texas.gov/agency-publication/guidelines-manuals/annual-financial-reporting-manual-for-texas-public-community-colleges-2021/>

Applicable Law	The provisions of Education Code Chapter 44, Subchapter B, relating to the purchase of goods and services under contract by a school district apply to the purchase of goods and services under contract by a junior college district. To the extent of any conflict, the provisions of Chapter 44, Subchapter B prevail over any other law relating to the purchase of goods and services by a junior college district. <i>Education Code 44.0311(a), 130.010</i>
Exception	Education Code Chapter 44, Subchapter B does not apply to a purchase, acquisition, or license of library goods and services for a library operated as a part of a junior college district. "Library goods and services" has the meaning assigned by Education Code 130.0101(a). [See EDAA] <i>Education Code 44.0311(c)</i> Note: For information on purchases using federal funds, see CAAB.
Board Authority	The board of trustees of the district may adopt rules and procedures for the acquisition of goods and services. <i>Education Code 44.031(d)</i>
Delegation of Authority	The board of trustees of the district may, as appropriate, delegate its authority under Education Code Chapter 44, Subchapter B regarding an action authorized or required by Chapter 44, Subchapter B to be taken by a college district to a designated person, representative, or committee. The board may not delegate the authority to act regarding an action authorized or required by Education Code Chapter 44, Subchapter B to be taken by the board. <i>Education Code 44.0312(a)–(b)</i>
<i>Disaster Exception</i>	Notwithstanding any other provision of the Education Code, in the event of a catastrophe, emergency, or natural disaster affecting a college district, the board of trustees of the district may delegate to the college chief executive officer or designated person the authority to contract for the replacement, construction, or repair of college district 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. <i>Education Code 44.0312(c)</i>
Contract with Another Agency	Except as provided by Government Code 771.003, an agency, including a junior college district, may agree or contract with another

agency for the provision of necessary and authorized services and resources. *Gov't Code 771.003(a)*

**Purchases Valued at
or Above \$50,000**

Except as provided by Education Code Chapter 44, Subchapter B, all college 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 that provides the best value for the 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. The reverse auction procedure as defined by Government Code 2155.062(d).
6. The formation of a political subdivision corporation under Local Government Code 304.001.

Education Code 44.031(a)

Note: Regarding construction of school facilities, see CM generally; CMA for competitive bidding; CMB for competitive sealed proposals; CMC and CMD for contracts using a construction manager; CME for design/build contracts; and CMF for job-order contracts for minor repairs/alterations.

Regarding notice to the Legislative Budget Board (LBB) about contracts ~~exceeding \$50,000~~, see GGC.

Factors

Except as provided by Education Code Chapter 44, Subchapter B, in determining to whom to award a contract, the district shall consider:

1. The purchase price.
2. The reputation of the vendor and of the vendor's goods and 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 goods or services.
8. For a contract 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 college 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 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)

The factors listed above are the only criteria that may be considered by the college district in its decision to award a contract. The college district may apply one, some, or all of the criteria, but it may not completely ignore them. *R.G.V. Vending v. Weslaco Indep. Sch. Dist.*, 995 S.W.2d 897 (Tex. App.—Corpus Christi 1999, no pet.).

Out-of-State Bidder

A governmental entity, including a college district, may not award a governmental contract to a nonresident bidder 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 the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed.

This requirement does not apply to a contract involving federal funds. A governmental entity shall use the information published by the comptroller in the Texas Register in evaluating the bids of a nonresident bidder.

Gov't Code 2252.001-.004

**Contracts Valued at
or Above \$1 Million**

This section applies to an entity that is not a governmental body that executes a contract with a governmental body that:

1. Has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body; or
2. Results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body in a fiscal year of the governmental body.

Gov't Code 552.371(a)

**Contract
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 governmental body for the duration of the contract;
2. Promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and
3. On completion of the contract, either:
 - a. Provide at no cost to the governmental body 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 governmental body.

Gov't Code 552.372(a)

**Acknowledgement
of PIA
Requirements**

Unless Government Code 552.374(c) applies, 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." *Gov't Code 552.372(b)*

Bid Acceptance and Contract Award Prohibited	A governmental body may not accept a bid for a contract described by Government Code 552.371 or award the contract to an entity that the governmental body has determined has knowingly or intentionally failed to comply with Government Code Chapter 552, Subchapter J in a previous bid or contract described by that section unless the governmental body determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J. <i>Gov't Code 552.372(c)</i>
Termination of Contract	A governmental body may terminate a contract described above if: 1. The governmental body provides notice under Government Code 552.373 to the entity that is party to the contract; 2. The contracting entity does not cure the violation in the period prescribed by Government Code 552.373; 3. The governmental body determines that the contracting entity has intentionally or knowingly failed to comply with a requirement of Subchapter J; and 4. The governmental body determines that the entity has not taken adequate steps to ensure future compliance with the requirements of Subchapter J. An entity has taken adequate steps to ensure future compliance with ~~this subchapter~~ Subchapter J if the entity produces contracting information requested by the governmental body that is in the custody or possession of the entity not later than the tenth business day after the date the governmental body makes the request and the entity establishes a records management program to enable the entity to comply with Subchapter J. <i>Gov't Code 552.374(a)–(b)</i>
<i>Exception</i>	A governmental body may not terminate a contract under this section 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. <i>Gov't Code 552.374(c)</i>
Contract with Person Indebted to College District	The board of trustees of a college district by resolution may establish regulations permitting the college district to refuse to enter into a contract or other transaction with a person indebted to the college district. It is not a violation of Education Code Chapter 44, Subchapter B for a college district, under the adopted regulations, 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 college 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 the college district requiring approval by the board.

Education Code 44.044

Contracts Prohibited

Scrutinized
Companies

A governmental entity, **including a college district**, may not enter into a governmental contract with a company that is identified on a list prepared and maintained by the comptroller under Government Code 806.051, 807.051, or 2252.153.

"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 a professional or consulting service subject to Government Code Chapter 2254.

Gov't Code 2252.001(3), .152

Companies that
Boycott Israel

This section applies only to a contract that:

1. Is between a governmental entity 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 governmental entity.

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

"Boycott Israel" has the meaning assigned by Government Code 808.001.

"Company" has the meaning assigned by Government Code 808.001, except that the term does not include a sole proprietorship.

Gov't Code ~~2270~~2271.001(1)–(2), .002

**Companies that
Boycott Energy
Companies**

This section applies only to a contract that:

1. **Is between a governmental entity 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 governmental entity.**

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a

written verification from the company that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

“Boycott energy company” has the meaning assigned by Government Code 809.001.

“Company” has the meaning assigned by Government Code 809.001, except that the term does not include a sole proprietorship.

Gov’t Code 2274.001(1)–(2), .002(a)–(b)

Exception

The above section does not apply to a governmental entity that determines the requirements of that section are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. *Gov’t Code 2274.002(c)*

Companies that Discriminate Against a Firearm Entity or Firearm Trade Association

This section applies only to a contract that:

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

A governmental entity may not enter into a contract with a company for the purchase of goods or services unless the contract contains a written verification from the company that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Gov’t Code 2274.002(a)–(b)

Definition

“Discriminate against a firearm entity or firearm trade association” means, with respect to the entity or association, to:

1. Refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;
2. Refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or

3. Terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

The term does not include:

1. The established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and
2. A company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:
 - a. To comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or
 - b. For any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

Gov't Code 2274.001(3)

Exceptions

The above prohibition does not apply to a governmental entity that contracts with a sole-source provider or does not receive any bids from a company that is able to provide the written verification required by that section.

The above prohibition does not apply to a contract entered into in connection with or relating to the issuance, sale, or delivery of notes under Government Code Chapter 404, Subchapter H or the administration of matters related to the notes, including the investment of note proceeds, as provided by Government Code 2274.003.

Gov't Code 2274.002(c), .003

Contracts with Foreign-Owned Companies

A governmental entity may not enter into a contract or other agreement relating to critical infrastructure in this state with a company:

1. If, under the contract or other agreement, the company would be granted direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the governmental entity for product warranty and support purposes; and
2. If the governmental entity knows that the company is:

- a. Owned by or the majority of stock or other ownership interest of the company is held or controlled by:
 - (1) Individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or
 - (2) A company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
- b. Headquartered in China, Iran, North Korea, Russia, or a designated country.

"Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

"Critical infrastructure" means the measures taken to protect a computer, computer network, computer system, or other technology infrastructure against unauthorized use or access.

"Designated country" means a country designated by the governor as a threat to critical infrastructure under Government Code 2274.0103.

Gov't Code 2274.0101(1), (2), (4), .0102(a)

**Required
Disclosures**

Disclosure of
Interested Parties

A governmental entity or state agency, including a college district, may not enter into a contract with a business entity that requires an action or vote by the governing body of the entity or agency before the contract may be signed, has a value of at least \$1 million, or is for services that would require a person to register as a lobbyist under Government Code Chapter 305, with certain exceptions, unless the business entity, in accordance with Government Code 2252.908 and rules adopted by the Texas Ethics Commission, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. [See GL] *Gov't Code 2252.908*

Disclosures by
Purchasing
Personnel

Before a state agency, including a college district, may award a major contract, a contract that has a value of at least \$1 million, for the purchase of goods or services to a business entity, each of the

state agency's purchasing personnel working on the contract must disclose in writing to the administrative head of the state agency any relationship the purchasing personnel is aware about that the employee has with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds \$25,000, or other owner of the business entity who is within a degree described by Government Code 573.002, the third degree by consanguinity or within the second degree by affinity of the purchasing employee. The state auditor shall develop a form for use in reporting a specified relationship.

"Purchasing personnel" means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding contract terms or conditions on a major contract, who is to be awarded a major contract, preparation of a solicitation for a major contract, or evaluation of a bid or proposal.

Gov't Code 2262.001(4), .004

*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 the 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 college district may receive bids or proposals under Education Code Chapter 44 through electronic transmission if the board of trustees of the college district 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

**Professional
Services**

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including services of an architect, attorney, certified public accountant, engineer, or fiscal agent.

The college 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, in lieu of the methods provided by Education Code 44.031.

Education Code 44.031(f)

A governmental entity, including a college 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.

"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~~, **or forensic science**;
2. Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, ~~or a registered nurse~~, **or a forensic analyst or forensic science expert**; 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, .003(a) [See also CM]

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

Certain Medical Services

If a governmental entity is procuring services provided in connection with the professional employment or practice of a physician, including a surgeon, or an optometrist or registered nurse and the number of contracts to be awarded under this section is not otherwise limited, the governmental entity may make the selection and award on the basis of:

1. **The provider's agreement to payment of a set fee, as a range or lump-sum amount; and**

2. The provider's affirmation and the governmental entity's verification that the provider has the necessary occupational licenses and experience.

Gov't Code 2254.008(a)

Professional
~~Service~~Services
Contract Exceeding
\$~~14~~50,000

A state agency, including a college district and other institutions of higher education, shall provide written notice to the LBB of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$~~14~~50,000. The notice must be on a form prescribed by the LBB and filed not later than the ~~tenth~~30th day after the date the agency enters into the contract. *Gov't Code 2254.006*

**Contingent Fee
Contracts for Legal
Services**

Government Code Chapter 2254, Subchapter C provisions applicable to a state governmental entity and a political subdivision apply to a contingent fee contract for legal services entered into by a college district. *Gov't Code 2254.102(a)*

Exceptions

Subchapter C does not apply to a contract for legal services entered into **by a political subdivision for the collection of an obligation that is delinquent or for services** under ~~Tax Code 6.30 or~~ Government Code 1201.027, except that Government Code 2254.1032, 2254.1034, 2254.1036, and 2254.1037 do apply to the contract. ~~Gov't Code~~ **"Obligation" includes a debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.** *Gov't Code 2107.001(1), 2254.102(e)*

**Emergency Damage
or Destruction**

If school equipment, a school facility, or a portion 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 of trustees 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 and
Computer-Related
Equipment**

Purchasing Through
DIR

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

Purchase Using
Competitive Bidding

Each institution of higher education, including each college district, that solicits bids or proposals from the public for the purchase and/or lease of computer equipment must do so in accordance with

applicable rules adopted by the comptroller pertaining to competitive bidding or competitive sealed proposals. 1 TAC 217.30(c)

*Required
Certification*

A public solicitation for the purchase or lease of computer equipment issued by an institution of higher education is required to contain the certification to be completed by bidders, in accordance with 1 Administrative Code 217.30. Failure of a bidder to provide this certification shall render the bidder ineligible to participate in the bidding. The institution of higher education shall reject the related bid and not evaluate it. 1 TAC 217.30(a)–(b)

*Special
Preference*

All institutions of higher education shall include in all bids for the purchase or lease of computer equipment a special preference for all manufacturers that have a program to recycle the computer equipment of other manufacturers, which program includes collection events and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand. The preference may take the form of extra evaluation points or be the tie-breaking factor among equal bids. 1 TAC 217.31

*Computer
Equipment*

“Computer equipment” is defined as a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner. 1 TAC 217.1(1)

**Cloud Computing
Services**

A state agency, including a college district, shall require each vendor contracting with the agency to provide cloud computing services for the agency to comply with the requirements of the state risk and authorization management program as provided by Government Code 2054.0593. DIR shall evaluate vendors to determine whether a vendor qualifies for a certification issued by DIR reflecting compliance with program requirements.

A state agency may not enter or renew a contract with a vendor to purchase cloud computing services for the agency that are subject to the state risk and authorization management program unless the vendor demonstrates compliance with program requirements.

A state agency shall require a vendor contracting with the agency to provide cloud computing services for the agency that are subject to the state risk and authorization management program to maintain program compliance and certification throughout the term of the contract.

In this section, “cloud computing service” has the meaning assigned by Government Code 2157.007.

Gov’t Code 2054.0593(a), (d)–(f)

**Data Security
Controls for Vendors**

Each state agency, including a college district, entering into or renewing a contract with a vendor authorized to access, transmit, use, or store data for the agency shall include a provision in the contract requiring the vendor to meet the security controls the agency determines are proportionate with the agency's risk under the contract based on the sensitivity of the agency's data. The vendor must periodically provide to the agency evidence that the vendor meets the security controls required under the contract. *Gov't Code 2054.138*

**Automated
Information System**

A local government, including a college district, shall 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 local government that purchases an item using a method listed above satisfies any state law requiring the local government to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.391*

Sole Source

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

1. An item for which competition is precluded because 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 sole source exception does 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 a contract for the purchase of personal property and shall be made in accordance with Education Code 44.031. *Education Code 44.031; Atty. Gen. Op. DM-347 (1995)*

Multiyear Contracts

The college 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 Commitment of Current Revenue, below. If the college district executes a multiyear insurance contract, it need

not advertise for insurance vendors until the 12-month period during which the college 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 college district may use competitive bidding to select a vendor as authorized by Education Code 44.031(a)(1).

A college 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

Opening Bids

Bids may be opened only by the governing body of the governmental entity at a public meeting or by an officer or employee of the governmental entity at or in an office of the governmental entity. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.

The governmental entity is entitled to reject any and all bids.

Local Gov't Code 271.026-.027(a)

Safety Record

In determining who is a responsible bidder, the governmental entity 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 if:

1. The governing body of the governmental entity has adopted a written definition and criteria for accurately determining the safety record of a bidder.
2. The governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder.
3. The determinations are not arbitrary and capricious.

Local Gov't Code 271.0275

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 governing body of the district 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 governing body of the district and must be conducted in the presence of the governing body of the district. All qualified bidders or their legal representatives may be present at the casting of lots. This section does not prohibit a district from rejecting all bids. <i>Local Gov't Code 271.901</i>
Competitive Sealed Proposals	In selecting a vendor through competitive sealed proposals as authorized by Education Code 44.031(a)(2), a college district shall follow the procedures prescribed below. <i>Education Code 44.0352(a)</i>
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. <i>Education Code 44.0352(b)</i>
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. <i>Education Code 44.0352(c)</i>
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. *Education Code 44.0352(d)*

Best Value
Determination

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 44.0352(e)*

**Interlocal
Agreements**

A local government, including a college district, may contract or agree with another local government or with the state or a state agency, including the comptroller, 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, such as to purchase goods and services, in accordance with Government Code Chapter 791. *Gov't Code 791.001, .011, .025*

An interlocal contract must be authorized by the governing body of each party to the contract; 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.

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 have a specified term of years. An interlocal contract may be renewed.

Gov't Code 791.011(d)–(f), (i)

A local government, including a council of governments, 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. This provision does not apply to services provided by firefighters, police officers, or emergency medical personnel.

A local government that purchases goods and services under Government Code 791.025 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 local government 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 local government 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 Occupations Code Chapter 1001 or 1051; or
2. The plans and specifications required under Chapters 1001 and 1051 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

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 participating local governments when the comptroller considers it feasible;
2. Solicitation of bids on items desired by local governments if the solicitation is considered feasible by the comptroller and is desired by the local government; and
3. Provision of information and technical assistance to local governments about the purchasing program.

The comptroller may charge a 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

College District Requirements

A local government 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 governing body of the local government requesting that the local government be allowed to participate on a voluntary basis, to the extent the comptroller deems feasible, and stating that the local government shall:

1. Designate an official to act for the local government in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the governing body will direct the decisions of the representative;
2. Be responsible for:
 - a. Submitting requisitions to the comptroller under any contract; 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 paragraph that provide the information and are sent at the times required by the comptroller;
- 3. Be responsible for making payment directly to the vendor; and
- 4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

A local government that purchases an item under a state contract or under a reverse auction procedure sponsored by the comptroller satisfies any state law requiring the local government 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, including the federal General Services Administration, or any other governmental entity in any state.

A local government may purchase goods or services directly from a vendor under a contract listed on a schedule. A state agency or local government contracting for the purchase of an automated information system under a contract listed on a schedule developed under this Government Code Chapter 2155, Subchapter I shall comply with Government Code 2157.068(e-1). An authorized purchase 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 local government may negotiate a lower price for goods or services under a contract listed on a schedule.

Gov't Code 2155.502, .504

Cooperative Purchasing Program

A local government 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. A local government that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative stating that the signing local government will:

1. Designate a person to act under the direction of, and on behalf of, that local government 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 Local Government Code Chapter 271, Subchapter F, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and
3. Be responsible for the vendor's compliance with provisions 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 organization.

A local government that purchases goods or services under Local Government Code Chapter 271, Subchapter F satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

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

Contract-Related Fee Report

A college 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 college districts by law shall document ~~any~~ contract-related fee, including ~~any~~ management fee, **paid by or to the college district** 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 of trustees of the college district. The written report must appear as an agenda item.

Education Code 44.0331

Reverse Auction

A local government 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 local government 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)

Commitment of Current Revenue

If a contract for the acquisition, including lease, of real or personal property retains to the governing body of a local government the continuing right to terminate the contract at the expiration of each budget period of the local government during the term of the contract, is conditioned on a best efforts attempt by the governing body 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 the local government's current revenues 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

The governing board of an institution of higher education may enter into an energy savings performance contract in accordance with Education Code 51.927. An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Government Code 2254.004. *Education Code 51.927(b), (i)*

[See policy CH for legal requirements pertaining to such contracts]

Recycled Products

A junior or community college district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. ~~The college district regularly shall review and revise its procurement procedures and specifications for purchase of goods, supplies, equipment, and materials in order to:~~ **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.**

- ~~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. Ensure to the maximum extent economically feasible that the college district purchase products that may be recycled when they have served their intended use.~~

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

Health and Safety Code 361.426(a)-(c); 30 TAC 328.201, .203

~~Exception~~ **The Exception**

A college district may request additional consideration from the Texas Commission on Environmental Quality (TCEQ) ~~by order shall exempt from if~~ compliance with this section ~~an entity described above if the entity petitions TCEQ for an exemption and TCEQ finds that compliance would work~~ create a hardship. "Hardship" means a circumstance that causes unreasonable burden on the ~~entity~~ college district. *Health and Safety Code 361.426(d); 30 TAC 328.201, .204(c)*

Agricultural Products

A college district that purchases agricultural products shall give preference to those produced, processed, or grown in this state if the cost to the college district is equal and the quality is equal. "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 agricultural products produced, processed, or grown in this state are not equal in cost and quality to other products, the college district shall give preference to agricultural products produced, processed, or grown in other states of the United States over foreign products if the cost to the college district is equal and the quality is equal.

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

Education Code 44.042(a)–(b), (f), (g)(1)

**Vegetation for
Landscaping**

A college district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the college district is equal and the quality is not inferior.
Education Code 44.042(c)

Dairy Products

A political subdivision, including a college district, may not purchase milk, cream, butter, cheese, or a product consisting largely of one or more of those items, that has been imported from outside the United States. The restriction does not apply to the purchase of milk powder if domestic milk powder is not readily available in the normal course of business. *Health and Safety Code 435.021*

Imported Beef

A political subdivision, including a college district, may not purchase beef or a product consisting substantially of beef that has been imported from outside the United States. *Agriculture Code 150.012(a)*

Commodity Items

Subject to Government Code 418.193, a public safety entity, as defined by 47 U.S.C. 1401, may purchase commodity items through DIR, and be charged a reasonable administrative fee, as provided by Government Code 2157.068. *Gov't Code 2157.068(j)*

Criminal History

A person or business entity, with the exception of a publicly-held corporation, that enters into a contract with a college district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. A college district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.
Education Code 44.034

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, a college 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***Impermissible Practices**

An officer, employee, or agent of a college district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Education Code 44.031(a) or (b) or otherwise violates Section 44.031(a) or (b). An officer or employee of a college district commits an offense if the officer or employee knowingly violates Education Code 44.031 in any other manner.

“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 purchased in one purchase. “Sequential purchases” means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

*Education Code 44.032(a)–(d) [See BBC]***Injunction**

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, a district attorney, a criminal district attorney, a citizen of the county in which the college district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this provision is entitled to reasonable attorney’s fees as approved by the court. *Education Code 44.032(f)*

Payment Due

A payment by a governmental entity, including a college district, under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of the date the governmental entity receives the goods under the contract, the date the performance of service under the contract is completed, or the date the governmental entity receives the invoice for the goods or service. However, a payment under a contract executed on or after September 1, 1993, owed by a political subdivision whose governing body meets only once a month or less frequently is overdue on the 46th day after the later event of those described above. The renewal, amendment, or extension of a contract executed on or before September 1, 1993, is considered to be the execution of a new contract. *Gov't Code 2251.021*

Interest

A payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of one percent and the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

Interest on an overdue payment stops accruing on the date the governmental entity or vendor mails or electronically transmits the payment.

The unpaid balance of a partial payment made within the prescribed period accrues interest, unless the balance is in dispute.

Gov't Code 2251.025(a)–(c), .029(a)

A political subdivision, including a college district, shall compute interest imposed on the political subdivision under Government Code Chapter 2251. The political subdivision shall pay the interest at the time payment is made on the principal. The political subdivision shall submit the interest payment with the net amount due for the goods or service. The political subdivision may not require a vendor to petition, bill, or wait an additional day to receive the interest due. The political subdivision may not require a vendor or subcontractor to agree to waive the vendor's or subcontractor's right to interest under Chapter 2251 as a condition of the contract between the parties. *Gov't Code 2251.027*

Early Payment Discount

The intent of the legislature is that a governmental entity should take advantage of an offer for an early payment discount. A governmental entity may not take an early payment discount a vendor offers unless the governmental entity makes a full payment within the discount period. If a governmental entity takes an early payment

discount later, the unpaid balance accrues interest beginning on the date the discount offer expires. *Gov't Code 2251.030(a)–(c)*

Exceptions

Except as provided by Government Code Chapter 2251, Subchapter D [see Alternate Vendor Remedy for Nonpayment of Contract, below], Government Code Chapter 2251, Subchapter B [see Payment Due, Interest, and Early Payment Discount, above] does not apply to a payment made by a governmental entity, including a college district, a vendor, or a subcontractor if:

1. There is a bona fide dispute between the political subdivision and a vendor, contractor, subcontractor, or supplier concerning the goods delivered or the service performed that causes the payment to be late;
2. There is a bona fide dispute between a vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late;
3. The terms of a federal contract, grant, regulation, or statute prevent the governmental entity from making a timely payment with federal funds; or
4. The invoice is not mailed to the person to whom it is addressed in strict accordance with any instruction on the purchase order relating to the payment.

Gov't Code 2251.002(a)

**Alternate Vendor
Remedy for
Nonpayment of
Contract**

A vendor may suspend performance required under a contract with a governmental entity, including a college district, if the governmental entity does not pay the vendor an undisputed amount within the time limits provided above and the vendor gives the governmental entity written notice informing the governmental entity that payment has not been received and stating the intent of the vendor to suspend performance for nonpayment.

The vendor may not suspend performance before the later of the tenth day after the date the vendor gives the notice.

A vendor who suspends performance is not:

1. Required to supply further labor, services, or materials until the vendor is paid the amount provided for under Government Code Chapter 2251, plus costs for demobilization and remobilization; or
2. Responsible for damages resulting from suspending work if the governmental entity with which the vendor has the contract has not notified the vendor in writing before performance

is suspended that payment has been made or that a bona fide dispute for payment exists.

A notification under item 2 that a bona fide dispute for payment exists must include a list of the specific reasons for nonpayment. If a reason specified is that labor, services, or materials provided by the vendor or the vendor's subcontractor are not provided in compliance with the contract, the vendor is entitled to a reasonable opportunity to cure the noncompliance of the listed items or offer a reasonable amount to compensate for listed items for which non-compliance cannot be promptly cured.

Gov't Code 2251.051

Disputed Payment

A governmental entity shall notify a vendor of an error **or disputed amount** in an invoice submitted for payment by the vendor not later than the 21st day after the date the entity receives the invoice-, **and shall include in such notice a detailed statement of the amount of the invoice which is disputed.** If a dispute is resolved in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance of the invoice submitted by the vendor beginning on the date that the payment for the invoice is overdue. If a dispute is resolved in favor of the governmental entity, the vendor shall submit a corrected invoice that must be paid within 30 days of receipt. The unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date. **The governmental entity may withhold from payments required no more than 110 percent of the disputed amount.** *Gov't Code 2251.042*

Financing

Definitions

Contract

“Contract” means an agreement entered into under the authority of the Public Property Finance Act, Local Government Code [Chapter 271.001 through 271.009](#), [Subchapter A](#) but does not mean a contract solely for the construction of improvements to real property. *Local Gov’t Code 271.003(2)*

Improvement

“Improvement” means a permanent building, structure, fixture, or fence that is erected on or affixed to land but does not include a transportable building or structure whether or not it is affixed to land. *Local Gov’t Code 271.003(10)*

Real Property

“Real property” means land, improvement, or an estate or interest in real property, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation in real property. *Local Gov’t Code 271.003(11)*

Proposed Contract

The board of trustees of a school district, including a community college district or junior college district, may execute, perform, and make payments under a contract under the Public Property Finance Act for the use or purchase or other acquisition of real property or an improvement to real property. If the board proposes to enter into such a contract, the board shall publish notice of intent to enter into the contract not less than 60 days before the date set to approve execution of the contract in a newspaper with general circulation in the district. The notice must summarize the major provisions of the proposed contract. The notice shall estimate the construction and other costs, but the board shall not publish the first advertisement for bids for construction of improvements until 60 days after publication of the notice of intent to enter into the contract. *Local Gov’t Code 271.004(a)*

Petition and
Referendum

If, within 60 days of the date of publication of the notice of intent, a written petition signed by a least five percent of the registered voters of the district is filed with the board of trustees requesting that the board order a referendum on the question of whether the contract should be approved, the board may not approve the contract or publish the first advertisement for bids for construction of improvements unless the question is approved by a majority of the votes received in a referendum ordered and held on the question.

The referendum shall be held in accordance with the applicable provisions of the Election Code. The requirement that an election must be held on a uniform election date as prescribed by the Election Code does not apply to an election held under this section.

Local Gov’t Code 271.004(b)–(c)

Submission to Attorney General	A lease-purchase contract entered into by the district under Local Government Code 271.004 and the records relating to its execution must be submitted to the attorney general for examination as to their validity. If the attorney general finds that the contract has been authorized in accordance with the law, the attorney general shall approve them, and the comptroller of public accounts shall register them. Following approval and registration, the contract is incontestable and is a binding obligation according to its terms. <i>Local Gov't Code 271.004(g)–(i)</i>
College District Obligation	The contract is a special obligation of the school district if ad valorem taxes are not pledged to the payment of the contract. If the contract provides that payments by the school district are to be made from maintenance taxes previously approved by the voters of the college district and are subject to annual appropriation or are paid from a source other than ad valorem taxes, the payments under the contract shall not be considered indebtedness under Tax Code 26.04(c). All or part of the obligation of the school district may be evidenced by one or more negotiable promissory notes. <i>Local Gov't Code 271.004(d)–(f)</i>
Cash Purchases with Available Funds	The requirements of the Public Property Finance Act do not apply to cash purchases of real property made with moneys from available funds. <i>Bandera Indep. Sch. Dist. v. Hamilton</i> , 2 S.W.3d 367 (Tex. App.—San Antonio 1999, pet. denied)
Eminent Domain	A college district may, by the exercise of the right of eminent domain, acquire the fee simple title to real property on which to construct school buildings or for any other public use necessary for the district. <i>Education Code 11.155(a), 130.084; Atty. Gen. Op. CM-700 (1970)</i>
Exceptions	A governmental entity, including a college district, may not take private property through the use of eminent domain if the taking confers a private benefit on a particular private party through the use of the property, is for a public use that is merely a pretext to confer a private benefit on a particular private party, is for economic development purposes, or is not for a public use. ~~Gov't Code 2206.001(b)~~ The governing board of an institution of higher education, including a college district, may not use the power of eminent domain to acquire land to be used for a lodging facility or for parking or a parking structure intended to be used in connection with the use of a lodging facility. <i>Gov't Code 2206.001(b); Education Code 51.9045(b)</i>

Procedures	When exercising the right of eminent domain, a college district must follow the procedures found at Government Code Chapter 2206, Subchapter B and Property Code Chapter 21, Subchapter B. <i>Gov't Code 2206.001(a); Property Code 21.011</i>
Reporting	Except as provided by Government Code 2206.154(b), not later than February 1 of each year, ~~public and private entities, including common carriers,~~ a public entity authorized by the state by a general or special law to exercise the power of eminent domain shall submit to the comptroller a report containing records and other information specified by Government Code Chapter 2206, Subchapter D for the purpose of providing the comptroller with information to maintain the eminent domain database under Government Code 2206.153. The entity shall submit the report in a form and in the manner prescribed by the comptroller. In addition to the annual report, an entity described above shall report to the comptroller any changes to the entity's eminent domain authority information reported under this section not later than the 90th day after the date on which the change occurred. <i>Gov't Code 2206.151, .154(a), (c)</i>
Repurchase of Real Property	A person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person's heirs, successors, or assigns, is entitled to repurchase the property as provided by Property Code Chapter 21, Subchapter E if the public use for which the property was acquired through eminent domain is canceled before the property is used for that public use, no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the tenth anniversary of that date, or the property becomes unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the tenth anniversary of the date of acquisition. Not later than the 180th day after the date an entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property, the entity shall send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice in accordance with Property Code 21.103. <i>Property Code 21.101–.102</i>

Definitions

Contract

“Contract” means an agreement entered **into** under the authority of the Public Property Finance Act, Local Government Code Chapter 271, Subchapter A but does not mean a contract solely for the construction of improvements to real property. *Local Gov’t Code 271.003(2)*

Personal Property

“Personal property” includes appliances, equipment, facilities, and furnishings, or an interest in personal property, whether movable or fixed, considered by the board to be necessary, useful, or appropriate to one or more purposes of the college district. The term includes all materials and labor incident to the installation of that personal property. The term includes electricity **and cloud computing services**. The term does not include real property. *Local Gov’t Code 271.003(8)*

Authority

The governing body of a governmental agency, including a college district, may execute, perform, and make payments under a contract with any person for the use or the purchase or other acquisition of any personal property, or the financing thereof, in accordance with the requirements of the Public Property Finance Act.

The governing body of a governmental agency may contract under Local Government Code ~~Section~~ 271.005 for materials and labor incident to the installation of personal property.

Local Gov’t Code 271.005(a)–(b)

**Asbestos-Related
Activity**

Prior to engaging in an “asbestos-related activity,” a college district shall comply with the requirements of the Texas Asbestos Health Protection Act, Occupations Code Chapter 1954. *Atty. Gen. Op. JM-1114 (1989)*

“Asbestos-related activity” means the removal, encapsulation, or enclosure of asbestos; the performance of an asbestos survey; the development of an asbestos management plan or response action; the collection or analysis of an asbestos sample; or the performance of another activity for which a license is required under the Texas Asbestos Health Protection Act. *Occupations Code 1954.002(4), .101; 25 TAC 296.1*

Unless a person is licensed by the ~~Texas~~ Department of State Health Services (~~TDSHS~~~~SDSHS~~) under Occupations Code Chapter 1954, the person may not engage in an asbestos-related activity listed at Occupations Code 1954.101. *Occupations Code 1954.101(a-); 25 TAC 296.1(e), .41*

Notice

A person engaged in removing asbestos from or encapsulating or enclosing asbestos in a public building shall notify the department in writing at least ten working days before the date the person begins the removal, encapsulation, or enclosure project according to applicable laws. A person may give the required notice orally if the removal, encapsulation, or enclosure project is of an emergency nature. *Occupations Code 1954.252, .101; 25 TAC ~~295.61~~296.251*

Records

A license holder shall keep an appropriate record of each asbestos-related activity the license holder performs in a public building. The license holder shall make the records available to ~~TDSHS~~~~SDSHS~~ at any reasonable time. The license holder shall keep the records for at least 30 years, or as long as required by federal law or regulation. *Occupations Code 1954.251; 25 TAC ~~295.58~~296.211(d), .291*

**Emergency
Operations Plan**

Each public junior college district shall adopt and implement a multihazard emergency operations plan for use in the district's facilities. The plan must address prevention, mitigation, preparedness, response, and recovery as defined by the Texas School Safety Center (TxSSC) in conjunction with the governor's office of homeland security and the commissioner. The plan must provide for:

1. Training in responding to an emergency for district employees, including substitute teachers;
2. Measures to ensure district employees, including substitute teachers, have classroom access to a telephone, including a cellular telephone, or another electronic communication device allowing for immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments;
3. Measures to ensure district communications technology and infrastructure are adequate to allow for communication during an emergency;
4. Measures to ensure coordination with the ~~Texas~~ Department of State Health Services (DSHS) and local emergency management agencies, law enforcement, health departments, and fire departments in the event of an emergency; and
5. The implementation of a required safety and security audit [see CG].

Education Code 37.108(a)

Submission to
TxSSC

Regular Review

TxSSC shall establish a random or need-based cycle for TxSSC's review and verification of a public junior college district's multihazard emergency operations plan. The cycle must provide for each district's plan to be reviewed at regular intervals as determined by TxSSC. A public junior college district shall submit its multihazard emergency operations plan to TxSSC on request of TxSSC and in accordance with TxSSC's review cycle.

TxSSC shall review each district's multihazard emergency operations plan submitted as described above and verify the plan meets the requirements of ~~Section~~ **Education Code** 37.108 or provide the district with written notice:

1. Describing the plan's deficiencies; and
2. Stating that the district must correct the deficiencies in its plan and resubmit the revised plan to TxSSC.

TxSSC may approve a district multihazard emergency operations plan that has deficiencies if the district submits a revised plan that TxSSC determines will correct the deficiencies.

Education Code 37.2071(a)–(c), (e)

Failure to
Submit the Plan

If a district fails to submit its multihazard emergency operations plan to TxSSC for review, TxSSC shall provide the district with written notice stating that the district has failed to submit a plan and must submit a plan to the center for review and verification. *Education Code 37.2071(d)*

Failure to
Respond to
Notice

If three months after the date of initial notification of a plan's deficiencies or failure to submit a plan a district has not corrected the plan deficiencies or has failed to submit a plan, TxSSC shall provide written notice to the district and agency that the district has not complied with the requirements of Education Code 37.2071 and must comply immediately. *Education Code 37.2071(f)*

*Review Based on
Audit Results*

In addition to a review of a district's multihazard emergency operations plan, TxSSC may require a district to submit its plan for immediate review if the district's safety and security audit results indicate that the district is not complying with applicable standards. *Education Code 37.207(c)*

Public Disclosure

A document relating to a public junior college district's multihazard emergency operations plan is subject to disclosure if the document enables a person to:

1. Verify that the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including DSHS, local emergency services agencies, law enforcement agencies, health departments, and fire departments;
2. Verify that the district's plan was reviewed within the last 12 months and determine the specific review dates;
3. Verify that the plan addresses the ~~four~~five phases of emergency management listed at Emergency Operations Plan;
4. Verify that district employees have been trained to respond to an emergency and determine the types of training, the number of employees trained, and the person conducting the training;
5. Verify that each campus in the district has conducted mandatory emergency drills and exercises in accordance with the plan and determine the frequency of the drills;

6. Verify that the district has completed a safety and security audit and determine the date the audit was conducted, the person conducting the audit, and the date the district presented the results of the audit to the district's board of trustees [see CG]; and
7. Verify that the district has addressed any recommendations by the district's board of trustees for improvement of the plan and determine the district's progress within the last 12 months.

Education Code 37.108(c-2)

Any document or information collected, developed, or produced during the review and verification of multihazard emergency operations plans under Education Code 37.2071 is not subject to disclosure under Government Code Chapter 552 ([Texas Public Information Act](#)). *Education Code 37.2071(i)*

**Emergency
Response and
Evacuation
Procedures**

Campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication, if appropriate, shall include procedures to:

1. Immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, as defined in 20 U.S.C. 1092(f)(6), unless issuing a notification will compromise efforts to contain the emergency;
2. Publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and
3. Test emergency response and evacuation procedures on an annual basis

20 U.S.C. 1092(f)(1)(J)

**Emergency Alert
System**

Each institution of higher education, including each college district, shall establish an emergency alert system for the institution's students and staff, including faculty. The emergency alert system must use email or telephone notifications in addition to any other alert method the institution considers appropriate to provide timely notification of emergencies affecting the institution or its students and staff.

At the time a student initially enrolls or registers for courses or a staff member begins employment, the institution shall:

1. Obtain a personal telephone number or email address from the student or staff member to be used to notify the individual in the event of an emergency; and
2. Register the student or staff member in the institution's emergency alert system.

A student or staff member may elect not to participate in an emergency alert system. An election may be submitted electronically or in writing, as chosen by the institution, and must be renewed at the start of each academic year. The personal identifying information obtained from an individual for the purpose of the emergency alert system of an institution of higher education, including an email address or telephone number, is confidential and not subject to disclosure under Government Code 552.021.

Education Code 51.217(g), .218

Fire Escapes

The owner of a building shall equip the building with at least one fire escape and with additional fire escapes as required by Health and Safety Code Chapter 791, Subchapters C and D if the building has at least:

1. Three stories and is used as a facility subject to Subchapter C, including a college, a dormitory, a theater or other public place of amusement, or any other facility used for public gatherings; or
2. Two stories and is used as a school.

A fire escape required by Chapter 791 must meet the specifications provided by Chapter 791 for an exterior stairway fire escape, an exterior chute fire escape, a combination of those exterior fire escapes, or an interior fire escape.

Chapter 791 does not apply to the construction of a structure in a municipality that has in effect a nationally recognized model building code governing the construction if the building code requires at least one one-hour fire-resistive means of escape with a total width equal to or greater than the total exit width required under Chapter 791 for a structure of three or more stories.

Health and Safety Code 791.002, .004(a), .021

[See GGE for response to requests from other governmental entities for mutual aid]

Administration of Epinephrine

Definitions

Anaphylaxis

"Anaphylaxis" means a sudden, severe, and potentially life-threatening allergic reaction that occurs when a person is exposed to an allergen. *Education Code 51.881(2); 25 TAC 40.3(1)*

Authorized Health-care Provider

An "authorized health-care provider" means a physician, as defined in Education Code 51.881, or person who has been delegated prescriptive authority by a physician under Occupations Code Chapter 157 as described in Health and Safety Code 773.0145. *25 TAC 40.3(2)*

Campus

"Campus" means an educational unit under the management and control of an institution of higher education and may include, in addition to the main campus, off-campus and secondary locations, such as branch campuses, teaching locations, regional centers, and where students are housed. *Education Code 51.881(3); 25 TAC 40.3(3)*

Epinephrine Auto-Injector

"Epinephrine auto-injector" means a disposable medical drug delivery device that contains a premeasured single dose of epinephrine that is intended to be used to treat anaphylaxis. *Education Code 51.881(4)*

Unassigned Epinephrine Auto-Injector

"Unassigned epinephrine auto-injector" means an epinephrine auto-injector prescribed by an authorized health-care provider in the name of the institution of higher education issued with a non-patient-specific standing delegation order for the administration of an epinephrine auto-injector, and issued by an authorized health-care provider. *25 TAC 40.3(6)*

Policy Permitted

An institution of higher education, **including a college district**, may adopt and implement a written policy regarding the maintenance, storage, administration, and disposal of unassigned epinephrine auto-injectors at each institution's campus. *Education Code 51.882(a); 25 TAC 40.2*

Contents

Each institution of higher education that adopts a policy must require that the institution's campuses have personnel or volunteers authorized and trained to administer an epinephrine auto-injector present.

If a policy is adopted, the policy must provide that personnel or volunteers who are authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis on the institution's campus and may provide that personnel or 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 event or while in transit to or from an off-campus event sponsored by the institution of higher education.

In development of an epinephrine auto-injector policy, an institution shall include:

1. A designated campus department to coordinate and manage policy implementation that includes:
 - a. Conducting an assessment;
 - b. Training of institution personnel;
 - c. Acquiring or purchasing, storing, and using unassigned epinephrine auto-injectors; and
 - d. Disposing of expired unassigned epinephrine auto-injectors;
2. Personnel who can be trained to administer unassigned epinephrine auto-injectors;
3. Locations of unassigned epinephrine auto-injectors;
4. Procedures for notifying local emergency medical services when a person is suspected of experiencing anaphylaxis and when an epinephrine auto-injector is administered; and
5. A plan to replace, as soon as reasonably possible, any unassigned epinephrine auto-injector that is used or close to expiration.

Education Code 51.882(b), (d); 25 TAC 40.5(c)

*Submission to
DSHS*

Each institution of higher education that adopts a policy shall submit to the ~~Texas~~ Department of State Health Services (DSHS) a copy of the policy and any amendment to the policy adopted by the institution. DSHS shall maintain a record of the most recent policy and amendments submitted by each institution and shall make that information available to the public on request. *Education Code 51.882(a)–(d), (f); 25 TAC 40.5(e)*

Publication

Each institution of higher education that adopts a policy shall include the policy in the institution's student handbook or similar publication and publish the policy on the institution's internet website. The policy and the locations of the unassigned epinephrine auto-injector must be publicly available. *Education Code 51.882(d); 25 TAC 40.5(d)*

Availability of
Epinephrine Auto-
Injectors

An institution of higher education 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 institution's campus as described in Education Code 51.885 and Health and Safety Code 773.0145. The number of additional adult packs may be determined by an individual campus assessment led by an authorized health-care provider, based on available resources. *25 TAC 40.5(a)*

Assessment

An institution performing an assessment may consider:

1. Consultation with campus police, office of risk management, office of food services, office of housing, office of health services, or any department involved with student well-being;
2. Campus geography, including high risk areas; and
3. Student population size.

25 TAC 40.5(b)

Prescription

A physician may prescribe, as described by Education Code 51.885, epinephrine auto-injectors in the name of an institution of higher education that adopts a policy. The physician shall provide the institution with a standing order for the administration of an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis.

Notwithstanding any other provisions of law, supervision or delegation by a physician is considered adequate if the physician periodically reviews the order and is available through direct telecommunication as needed for consultation, assistance, and direction.

Education Code 51.885(a), (c)

Report

Not later than the tenth business day after the date a personnel member or volunteer administers an epinephrine auto-injector in accordance with the policy, the institution of higher education shall report to the physician who prescribed the epinephrine auto-injector and the commissioner of state health services. The report must include the following information:

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 personnel member, 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 state health services.

Notifications to the commissioner of DSHS shall be submitted on the designated electronic form available on [DSHS's School Health Program website](#).¹

Education Code 51.883; 25 TAC 40.7(b)–(c)

Employee Training

Each institution of higher education that adopts a policy is responsible for training personnel or volunteers in the administration of an epinephrine auto-injector. The training must:

1. Include information on:
 - a. Recognizing the signs and symptoms of anaphylaxis;
 - b. Administering an epinephrine auto-injector;
 - c. Implementing emergency procedures, if necessary, after administering an epinephrine auto-injector; and
 - d. Properly disposing of used or expired epinephrine auto-injectors; and
2. Be provided in a formal training session or through online education and be completed annually.

Training shall be consistent with the most recent Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs published by the federal Centers for Disease Control and Prevention.

Each institution shall maintain training records and each public institution shall make available upon request a list of those institution personnel or institution volunteers trained and authorized to administer the unassigned epinephrine auto-injector on the campus.

Education Code 51.884; 25 TAC 40.6

Storage

The supply of epinephrine auto-injectors at a campus must be stored in a secure location and be easily accessible to personnel or volunteers authorized and trained to administer an epinephrine auto-injector. The unassigned epinephrine auto-injector must be stored in accordance with the manufacturer's guidelines. *Education Code 51.882(e); 25 TAC 40.5(d)*

Funding	An institution of higher education may accept gifts, grants, donations, and federal funds to implement this section. <i>Education Code 51.886</i>
Immunity from Discipline	A person who in good faith takes, or fails to take, any action under 25 Administrative Code Chapter 40, Subchapter A or Education Code Chapter 51, Subchapter Y-1 is immune from civil or criminal liability or disciplinary action resulting from that act or failure to act, including: 1. Issuing an order for epinephrine auto-injectors; 2. Supervising or delegating the administration of an epinephrine auto-injector; 3. Possessing an epinephrine auto-injector; 4. Maintaining an epinephrine auto-injector; 5. Storing an epinephrine auto-injector; 6. Disposing of an epinephrine auto-injector; 7. Prescribing an epinephrine auto-injector; 8. Dispensing an epinephrine auto-injector; 9. Administering, or assisting in administering, an epinephrine auto-injector; 10. Providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or 11. Undertaking any other act permitted or required under ~~this subchapter~~ Subchapter Y-1. This immunity is in addition to other immunity or limitations of liability provided by law. <i>Education Code 51.888(a)–(b); 25 TAC 40.8</i>
Records Retention	Records relating to implementing and administering the institution of higher education unassigned epinephrine auto-injector policy shall be retained per the record retention schedule for records of institutions of higher education found in 13 Administrative Code 6.10. [See also CIA] 25 TAC 40.7(a)
Automated External Defibrillator	"Automated external defibrillator" means a heart monitor and defibrillator that:

1. Has received approval from the U.S. Food and Drug Administration (FDA) of its premarket notification filed under 21 U.S.C. 360(k);
2. Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and
3. On determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

Each person or entity, other than a licensed practitioner, that acquires an automated external defibrillator that has not been approved by the FDA for over-the-counter sale shall ensure that the automated external defibrillator has been delivered to that person or entity by a licensed practitioner in the course of his professional practice or upon a prescription or other order lawfully issued in the course of his professional practice.

Health and Safety Code 779.001, .007

**Notice of
Acquisition**

When a person or entity acquires an automated external defibrillator, the person or entity shall notify the local emergency medical services provider of the existence, location, and type of automated external defibrillator. *Health and Safety Code 779.005*

Notice of Use

A person or entity that provides emergency care to a person in cardiac arrest by using an automated external defibrillator shall promptly notify the local emergency medical services provider. *Health and Safety Code 779.004*

**Maintenance and
Inspection**

A person or entity that owns or leases an automated external defibrillator shall:

1. Maintain and test the automated external defibrillator according to the manufacturer's guidelines; and
2. Conduct a monthly inspection to verify the automated external defibrillator is placed at its designated location, reasonably appears to be ready for use, and does not reasonably appear to be damaged in a manner that could prevent operation.

Health and Safety Code 779.003

¹ DSHS, Required Reporting of Administered Epinephrine Auto-Injectors to DSHS website: <https://www.dshs.texas.gov/schoolhealth/forms/ReportingForm-Epinephrine.aspx>

Reduction of Energy Consumption

Each political subdivision or institution of higher education, including each college district, shall establish a goal to reduce the electric consumption by the entity by at least five percent each state fiscal year for seven years, beginning September 1, 2019.

Each political subdivision or institution of higher education shall implement all energy efficiency measures that meet the standards established for a contract for energy conservation measures under Local Government Code 302.004(b) in order to reduce electricity consumption by the existing facilities of the entity.

A political subdivision or institution of higher education annually shall report to the State Energy Conservation Office (SECO), on forms provided by that office, regarding the entity's goal, the entity's efforts to meet the goal, and progress the entity has made. SECO shall provide assistance and information to the entity to help the entity meet established goals.

A political subdivision or institution of higher education that does not attain the established goals must include in the report justification that the entity has already implemented all available cost-effective measures. An entity that submits a report indicating that the entity has reviewed its available options, has determined that no additional measures are cost-effective, and has already implemented all available cost-effective measures is exempt from the annual reporting requirement if a subsequent report would indicate no change in status. An entity may be required to provide notice that it is exempt to SECO.

*Health and Safety Code 388.005(b)–(e)***Exception**

This section does not apply to a state agency or an institution of higher education that SECO determines, before September 1, 2007, adopted a plan for conserving energy under which the agency or institution established a percentage goal for reducing the consumption of electricity. The exemption provided by this section applies only while the agency or institution has an energy conservation plan in effect and only if the agency or institution submits reports on the conservation plan each year to the governor, the Legislative Budget Board, and SECO. *Health and Safety Code 388.005(f)*

Energy or Water Conservation Measures

The governing board of an institution of higher education, including a college district, may enter into an energy savings performance contract in accordance with this section. "Energy savings performance contract" means a contract with a provider for energy or water conservation or usage measures in which the estimated energy savings, utility cost savings, increase in billable revenues, or increase in meter accuracy resulting from the measures is subject to

guarantee to offset the cost of the energy or water conservation or usage measures over a specified period. **The term does not include the design or new construction of a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project.** The term includes a contract related to the pilot program described by Local Government Code 302.001(9-a) and a contract for the installation or implementation of the following in new or existing facilities, including all causally connected work:

1. Insulation of a building structure and systems within the building.
2. Storm windows or doors, caulking or weather stripping, multi-glazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption.
3. Automatic energy control systems, including computer software and technical data licenses.
4. Heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption.
5. Lighting fixtures that increase energy efficiency.
6. Energy recovery systems.
7. Electric systems improvements.
8. Water-conserving fixtures, appliances, and equipment or the substitution of ~~nonwater~~**non-water**-using fixtures, appliances, and equipment.
9. Water-conserving landscape irrigation equipment.
10. Landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - a. Landscape contouring, including the use of berms, swales, and terraces; and
 - b. The use of soil amendments that increase the water-holding capacity of the soil, including compost.
11. Rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control.

12. Equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent.
13. Equipment needed to capture water from nonconventional, alternate sources, including air-conditioning condensate or graywater, for nonpotable uses.
14. Metering or related equipment or systems that improve the accuracy of billable-revenue-generation systems.
15. Alternative fuel programs resulting in energy cost savings and reduced emissions for local government vehicles, including fleet vehicles.
16. Programs resulting in utility cost savings.
17. Other energy or water conservation-related improvements or equipment, including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding the list above, 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 contracting and delivery procedures for construction projects described at Government Code Chapter 2269 do not apply to energy savings performance contracts.

Education Code 51.927(a)–(d), (k); Local Gov’t Code 302.001(4)

Performance Bond

Before entering into an energy savings performance contract, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond in accordance with Government Code Chapter 2253. The board may also require a separate bond to cover the value of the guaranteed savings on the contract. *Education Code 51.927(e)*

Contract Term

The board may enter into an energy savings performance contract for a period of more than one year only if the board finds that the

amount the institution would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20 years from the date of installation. *Education Code 51.927(f)*

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; or
3. Under the 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, and the board is not required to pay for such costs solely out of the savings realized by the college district under an energy savings performance contract.

Education Code 51.927(g)–(g-1)

Cost Savings

An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the institution of higher education under the contract. If the term of the contract exceeds one year, the institution'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 board, divided by the number of years in the contract term beginning after the final date of installation. The board shall consider all costs of the energy or water conservation measures, including costs of design, engineering, installation, maintenance, repairs, and debt service. *Education Code 51.927(f), (h)*

**Contract
Procurement**

An energy savings performance contract shall be let according to the procedures established for professional services by Government Code 2254.004. Notice of the request for qualifications shall be given in the manner provided by Government Code 2156.002.

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.

Education Code 51.927(g-1), (i)

Guidelines

The Coordinating Board, in consultation with SECO with regard to energy conservation measures, shall establish guidelines and an approval process for awarding energy savings performance contracts. The guidelines 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. A contract is not required to be reviewed or approved by SECO. Occupations Code 1001.053 and 1001.047 apply to work performed under the contract.

The guidelines must require the Coordinating Board to review any reports submitted to the Coordinating Board that measure and verify cost savings to an institution of higher education under an energy savings performance contract; and based on the reports, provide an analysis, on a periodic basis, of the cost savings under the energy savings performance contract to the governing board of the institution of higher education and the Legislative Budget Board until the governing board of the institution of higher education determines that the analysis is no longer required to accurately measure cost savings.

Education Code 51.927(i), (l)

Energy Usage Report

A governmental entity, including a college district, shall record in an electronic repository the governmental entity's metered amount of electricity, water, or natural gas consumed for which it is responsible to pay and the aggregate costs for those utility services. The governmental entity shall report the recorded information on a publicly accessible internet website with an interface designed for ease of navigation if available, or at another publicly accessible location.
Gov't Code 2265.001

Light Bulbs

An institution of higher education, including a college district, shall purchase for use in each type of light fixture in an educational or housing facility the commercially available model of light bulb that:

1. Is compatible with the light fixture;
2. Uses the fewest watts for the necessary luminous flux or light output; and
3. Is the most cost-effective, considering the factors described above.

"Housing facility" means a single- or multi-family residence used exclusively for housing or boarding, or housing and boarding students, faculty, or staff members of an institution of higher learning. The term includes infirmary and student union building, but does not include a housing or boarding facility for the use of a fraternity, sorority, or private club.

Education Code 51.9271, 53.02(7)

Recycling Program

An institution of higher education, including a college district, shall:

1. ~~In cooperation with the comptroller or the Texas Commission on Environmental Quality (TCEQ) establish~~ **Establish** a program for the separation and collection of all recyclable materials generated by the entity's operations, ~~including, at a minimum, aluminum, steel containers, aseptic packaging, polycoated paperboard cartons, high-grade office paper, and corrugated cardboard;~~
2. Provide procedures for collecting and storing recyclable materials, ~~provide~~ containers for recyclable materials, and ~~provide~~ 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; and
4. Establish educational and incentive programs to encourage maximum employee participation.

~~"Recyclable materials" includes materials in the entity's possession that have been abandoned or disposed of by the entity's officers or employees or by any other person.~~

"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.

Health and Safety Code 361.425(a), (d); 30 TAC 328.201--202

Exception	A college district may exclude one or more recyclable materials from its program if the Texas Commission on Environmental Quality (TCEQ) finds that a recycling program for a recyclable material is not available through its solid waste provider or the inclusion of a recyclable material would create a hardship. A college district may request additional consideration from the TCEQ if compliance with this section would create a hardship. “Hardship” means a circumstance that causes unreasonable burden on the college district. <i>Health and Safety Code 361.425(d); 30 TAC 328.201, .204(b)–(c)</i>
Certificate of Mold Remediation	If a property owner, including a college district, sells property, the property owner shall provide to the buyer a copy of each certificate of mold remediation issued for the property during the five years preceding the date the property owner sells the property. <i>Occupations Code 1958.154(b); 16 TAC 78.150(e)</i>
Pools Generally	An owner, manager, operator, or other attendant, including a college district, in charge of a 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 safety standards necessary to prevent drowning adopted by the executive commissioner of the Health and Human Services Commission. <i>Health and Safety Code 341.0645; 25 TAC 265.181–.211</i> A person, including a college district, may use, maintain, and repair a pool or spa that was in compliance with the laws of this state on August 31, 2021, and related mechanical, electrical, and plumbing systems in accordance with the laws applicable to the pool or system on that date. <i>Health and Safety Code 341.0645(f)</i> Drains Each public pool and spa shall comply with the drain cover standards found at 15 U.S.C. 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. <i>15 U.S.C. 8003</i>
Human Trafficking Signs at Cosmetology Facilities	A person, including a college district, who operates a cosmetology facility shall post at the facility the sign prescribed under Government Code 402.0351(b), or, if applicable, a similar sign or notice as prescribed by other state law. “Cosmetology facility” means a person who holds a license to operate a facility or school under Occupations Code Chapter 1602. [See CJ] Gov’t Code 402.0351(a)(1), (a-1)(2)

**Display of National
Motto**

An institution of higher education, including a college district, must display in a conspicuous place in each building of the institution a durable poster or framed copy of the U.S. national motto, "In God We Trust," if the poster or framed copy meets the requirements below and is donated for display at the institution or purchased from private donations and made available to the institution.

A poster or framed copy of the national motto:

1. Must contain a representation of the U.S. flag centered under the national motto and a representation of the state flag; and
2. May not depict any words, images, or other information other than the representations listed in item 1.

An institution of higher education may accept and use private donations for the purposes of this section.

Education Code 1.004

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**Section I: College
District Peace
Officers**

The governing board of each state institution of higher education, including each college district, may employ and commission peace officers to maintain law and order. The primary jurisdiction of a peace officer so commissioned includes all counties in which property is owned, leased, rented, or otherwise under the control of the institution of higher education that employs the peace officer.

Within a peace officer's primary jurisdiction, a peace officer:

1. Is vested with all the powers, privileges, and immunities of peace officers.
2. May, in accordance with Code of Criminal Procedure Chapter 14 arrest without a warrant any person who violates a law of the state.
3. May enforce all traffic laws on streets and highways.

Outside a peace officer's primary jurisdiction a peace officer commissioned under this section is vested with all the powers, privileges, and immunities of peace officers and may arrest any person who violates any law of the state if the peace officer:

1. Is summoned by another law enforcement agency to provide assistance;
2. Is assisting another law enforcement agency; or
3. Is otherwise performing duties as a peace officer for the institution of higher education that employs the peace officer.

Any officer assigned to duty and commissioned shall take and file the oath required of peace officers.

Any person commissioned under this section must be a certified police officer under the requirements of the Texas Commission on Law Enforcement (TCOLE).

Education Code 51.203; Code of Criminal Procedure Art. 2.12

**Motor Vehicle Stops
Reports Required**

A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

1. A physical description of any person operating the motor vehicle who is detained as a result of the stop, including:
 - a. The person's gender;

- b. The person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;
2. The initial reason for the stop;
3. Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;
4. Whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;
5. The reason for the search, including whether:
 - a. Any contraband or other evidence was in plain view;
 - b. Any probable cause or reasonable suspicion existed to perform the search; or
 - c. The search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;
6. Whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
7. The street address or approximate location of the stop;
8. Whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and
9. Whether the officer used physical force that resulted in bodily injury, as that term is defined by Penal Code 1.07 during the stop.

The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing the reports to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

Code of Criminal Procedure 2.133

A law enforcement agency, including a college district police department, shall compile and analyze the information contained in each report received by the agency under Code of Criminal Proce-

dures 2.133. Not later than March 1 of each year, each law enforcement agency shall submit a report containing the incident-based data compiled during the previous calendar year, in accordance with Code of Criminal Procedure 2.134, to TCOLE and to the governing body of each county or municipality served by the agency. *Code of Criminal Procedure 2.134(b)*

Civil Penalty

If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Code of Criminal Procedure 2.134, the agency is liable to the state for a civil penalty in an amount not to exceed \$5,000 for each violation. *Code of Criminal Procedure 2.1385(a)*

Racial Profiling
Prohibition

A peace officer may not engage in racial profiling. *Code of Criminal Procedure 2.131*

*Departmental
Policy Required*

Each law enforcement agency in this state, including each college district police department, that employs peace officers who make motor vehicle stops in the routine performance of the officers' official duties shall adopt a detailed written policy on racial profiling. The policy must:

1. Clearly define acts constituting racial profiling;
2. Strictly prohibit peace officers employed by the agency from engaging in racial profiling;
3. Implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
4. Provide public education relating to the agency's complaint and complaint process, including providing the telephone number, mailing address, and email address to make a complaint or complaint with respect to each ticket, citation, or warning issued by a peace officer;
5. Require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this section;
6. Require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information relating to:
 - a. The race or ethnicity of the individual detained;

- b. Whether a search was conducted and, if so, whether the individual detained consented to the search;
 - c. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
 - d. Whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Penal Code 1.07 during the stop;
 - e. The location of the stop; and
 - f. The reason for the stop; and
7. Require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under item 6 to:
- a. TCOLE; and
 - b. The governing body of each county or municipality served by the agency.

On adoption of a racial profiling policy, a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body-worn camera, as that term is defined by Occupations Code 1701.651. If a law enforcement agency installs video or audio equipment or equips peace officers with body-worn cameras, the policy adopted by the agency must include standards for reviewing video and audio documentation.

A report required under item 7, above, may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer.

A law enforcement agency shall review the data collected under item 6, above, to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

Code of Criminal Procedure 2.132(a)–(b), (d)–(e), (h)

**Duty to Request
and Render Aid**

A peace officer who encounters an injured person while discharging the officer's official duties shall immediately and as necessary:

1. Request emergency medical services personnel to provide the person with emergency medical services; and
2. While waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skill and training.

Code of Criminal Procedure 2.33(a)

Exception

The peace officer is not required to request emergency medical services or provide first aid or treatment if making the request or providing the treatment would expose the officer or another person to a risk of bodily injury or the officer is injured and physically unable to make the request or provide the treatment. *Code of Criminal Procedure 2.33(b)*

**Excessive Force
Duty to
Intervene**

A peace officer has a duty to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if the amount of force exceeds that which is reasonable under the circumstances and the officer knows or should know that the other officer's use of force:

1. Violates state or federal law;
2. Puts a person at risk of bodily injury, as that term is defined by Penal Code 1.07 and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and
3. Is not required to apprehend the person suspected of committing an offense.

A peace officer who witnesses the use of excessive force by another peace officer shall promptly make a detailed report of the incident and deliver the report to the supervisor of the peace officer making the report.

Code of Criminal Procedure 2.1387

Neck Restraints

A peace officer may not intentionally use a choke hold, carotid artery hold, or similar neck restraint in searching or arresting a person unless the restraint is necessary to prevent serious bodily injury to or the death of the officer or another person. *Code of Criminal Procedure 2.33*

Apprehension of
Certain Individuals

A peace officer, without a warrant, may take a person into custody, regardless of the age of the person, if the officer has reason to believe and does believe that the person is a person with mental illness and because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained and believes that there is not sufficient time to obtain a warrant before taking the person into custody.

In accordance with Health and Safety Code 573.001 and 573.002, the peace officer shall immediately transport the apprehended person to a mental health facility or transfer the apprehended person to emergency services personnel and file the notification of detention.

A law enforcement agency and an emergency medical services provider may execute a memorandum of understanding as described by Health and Safety Code 573.005 under which emergency medical services personnel employed by the provider may transport a person taken into custody under Section 573.001 by a peace officer employed by the law enforcement agency.

Health and Safety Code 573.001-.002, .005

Diversion of Certain
Individuals

Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

1. There is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;
2. It is reasonable to divert the person;
3. The offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and
4. The mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

This section does not apply to a person who is accused of an offense under Penal Code 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08.

Code of Criminal Procedure 16.23

Code of Criminal Procedure 14.035 applies only to a person with an intellectual or developmental disability who resides at one of the

following types of facilities operated under the home- and community-based services waiver program in accordance with 42 U.S.C. 1396n:

1. A group home; or
2. An intermediate care facility for persons with an intellectual or developmental disability (ICF/IID) as defined by 40 Administrative Code 9.153.

In lieu of arresting a person described above, a peace officer may release the person at the person's residence if the officer:

1. Believes confinement of the person in a correctional facility as defined by Penal Code 1.07 is unnecessary to protect the person and the other persons who reside at the residence; and
2. Made reasonable efforts to consult with the staff at the person's residence and with the person regarding that decision.

Code of Criminal Procedure 14.035(a)–(b)

In lieu of arresting an individual who is not a child, as defined by Family Code 51.02, and who commits an offense under Penal Code 49.02, a peace officer may release the individual if:

1. The officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and
2. The individual:
 - a. Is released to the care of an adult who agrees to assume responsibility for the individual;
 - b. Verbally consents to voluntary treatment for substance use in a program in a treatment facility licensed and approved by the Health and Human Services Commission, and the program admits the individual for treatment; or
 - c. Verbally consents to voluntary admission to a facility that provides a place for individuals to become sober under supervision, and the facility admits the individual for supervision.

Code of Criminal Procedure 14.031(a)

A local entity or campus police department may not:

1. Adopt, enforce, or endorse a policy under which the entity or department prohibits or materially limits the enforcement of immigration laws;

Immigration
Enforcement
*Limitation on
Enforcement
Prohibited*

2. As demonstrated by pattern or practice, prohibit or materially limit the enforcement of immigration laws; or
3. For an entity that is a law enforcement agency or for a department, as demonstrated by pattern or practice, intentionally violate Code of Criminal Procedure 2.251, below.

The prohibition on endorsing a policy as described at item 1 does not apply to an elected official.

Gov't Code 752.053(a); City of El Cenizo v. Texas, 890 F.3d 164 (5th Cir. 2018)

*Limitation on
Peace Officer
Enforcement
Activity*

In compliance with Government Code 752.053(a), a local entity or campus police department may not prohibit or materially limit a person who is a commissioned peace officer described by Code of Criminal Procedure 2.12, a corrections officer, a booking clerk, a magistrate, or a district attorney, criminal district attorney, or other prosecuting attorney and who is employed by or otherwise under the direction or control of the entity or department from doing any of the following:

1. Inquiring into the immigration status of a person under a lawful detention or under arrest;
2. With respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or under arrest, including information regarding the person's place of birth:
 - a. Sending the information to or requesting or receiving the information from U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, or another relevant federal agency;
 - b. Maintaining the information; or
 - c. Exchanging the information with another local entity or campus police department or a federal or state governmental entity;
3. Assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance; or
4. Permitting a federal immigration officer to enter and conduct enforcement activities at a jail to enforce federal immigration laws.

Gov't Code 752.053(b)

Exception	Notwithstanding Government Code 752.053(b)(3), a local entity or campus police department may prohibit persons who are employed by or otherwise under the direction or control of the entity or department from assisting or cooperating with a federal immigration officer if the assistance or cooperation occurs at a place of worship. <i>Gov't Code 752.053(c)</i>
<i>Detainer Requests</i>	A law enforcement agency that has custody of a person subject to an immigration detainer request issued by U.S. Immigration and Customs Enforcement shall: 1. Comply with, honor, and fulfill any request made in the detainer request provided by the federal government; and 2. Inform the person that the person is being held pursuant to an immigration detainer request issued by U.S. Immigration and Customs Enforcement. <i>Code of Criminal Procedure 2.251(a)</i>
Exception	A law enforcement agency is not required to perform a duty imposed by Code of Criminal Procedure 2.251(a) with respect to a person who has provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver's license or similar government-issued identification. <i>Code of Criminal Procedure 2.251(b)</i>
<i>Inquiry during a Criminal Investigation</i>	In the course of investigating an alleged criminal offense, a peace officer may inquire as to the nationality or immigration status of a victim of or witness to the offense only if the officer determines that the inquiry is necessary to: 1. Investigate the offense; or 2. Provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement. <i>Code of Criminal Procedure 2.13(d)</i>
Exception	Code of Criminal Procedure 2.13(d) does not prevent a peace officer from: 1. Conducting a separate investigation of any other alleged criminal offense; or 2. Inquiring as to the nationality or immigration status of a victim of or witness to a criminal offense if the officer has probable cause to believe that the victim or witness has engaged in specific conduct constituting a separate criminal offense. <i>Code of Criminal Procedure 2.13(e)</i>

Community
Outreach

Each law enforcement agency that is subject to the requirements of Government Code Chapter 752, Subchapter C may adopt a written policy requiring the agency to perform community outreach activities to educate the public that a peace officer may not inquire into the immigration status of a victim of or witness to an alleged criminal offense unless, as provided by Code of Criminal Procedure 2.13, the officer determines that the inquiry is necessary to:

1. Investigate the offense; or
2. Provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.

A policy adopted under this section must include outreach to victims of family violence, as that term is defined by Family Code 71.004, including those receiving services at family violence centers under Human Resources Code Chapter 51; and sexual assault, including those receiving services under a sexual assault program, as those terms are defined by Government Code 420.003.

Gov't Code 752.057

*Discrimination
Prohibited*

A local entity, campus police department, or a person employed by or otherwise under the direction or control of the entity or department may not consider race, color, religion, language, or national origin while enforcing immigration laws except to the extent permitted by the U.S. Constitution or Texas Constitution. *Gov't Code 752.054*

Body-Worn
Cameras
Policy

A law enforcement agency that receives a grant to provide body-worn cameras to its peace officers or that otherwise operates a body-worn camera program shall adopt a policy for the use of body-worn cameras.

A policy described above must ensure that a body-worn camera is activated only for a law enforcement purpose and must include:

1. Guidelines for when a peace officer should activate a camera or discontinue a recording currently in progress, considering the need for privacy in certain situations and at certain locations;
2. Provisions relating to data retention, including a provision requiring the retention of video for a minimum period of 90 days;
3. Provisions relating to storage of video and audio, creation of backup copies of the video and audio, and maintenance of data security;

4. Provisions relating to the collection of a body-worn camera, including the applicable video and audio recorded by the camera, as evidence;

4.5. Guidelines for public access, through open records requests, to recordings that are public information;

5.6. Provisions entitling an officer to access any recording of an incident involving the officer before the officer is required to make a statement about the incident;

6.7. Procedures for supervisory or internal review; and

7.8. The handling and documenting of equipment and malfunctions of equipment.

The policy must require a peace officer who is equipped with a body-worn camera and actively participating in an investigation to keep the camera activated for the entirety of the officer's active participation in the investigation unless the camera has been deactivated in compliance with that policy. The policy may not require a peace officer to keep a body-worn camera activated for the entire period of the officer's shift.

The policy must be consistent with the Federal Rules of Evidence and Texas Rules of Evidence.

Occupations Code 1701.655

Training

Before a law enforcement agency may operate a body-worn camera program, the agency must provide training to:

1. Peace officers who will wear the body-worn cameras; and
2. Any other personnel who will come into contact with video and audio data obtained from the use of body-worn cameras.

Occupations Code 1701.656(a)

Use of Body-Worn Cameras

A peace officer equipped with a body-worn camera shall act in a manner that is consistent with the policy of the law enforcement agency that employs the officer with respect to when and under what circumstances a body-worn camera must be activated.

A peace officer equipped with a body-worn camera may choose not to activate a camera or may choose to discontinue a recording currently in progress for any ~~nonconfrontational~~ encounter with a person, including that is not related to an interview of a witness or victim investigation.

A peace officer who does not activate a body-worn camera in response to a call for assistance must include in the officer's incident

report or otherwise note in the case file or record the reason for not activating the camera.

Any justification for failing to activate the body-worn camera because it is unsafe, unrealistic, or impracticable is based on whether a reasonable officer under the same or similar circumstances would have made the same decision.

Occupations Code 1701.657

Personal
Cameras

A peace officer who is employed by a law enforcement agency that has not received a grant **described by Occupations Code 1701.658** or who has not otherwise been provided with a body-worn camera by the agency that employs the officer may operate a body-worn camera that is privately owned only if permitted by the employing agency.

An agency that authorizes the use of privately-owned body-worn cameras must make provisions for the security and compatibility of the recordings made by those cameras.

Occupations Code 1701.658(c)–(d)

Use of Drones

Each law enforcement agency that uses or intends to use a drone for law enforcement purposes shall:

- 1. Adopt a written policy regarding the agency's use of force by means of a drone, before the agency first uses a drone, and update the policy as necessary; and**
- 2. Not later than January 1 of each even-numbered year, submit the policy to TCOLE in the manner prescribed by TCOLE.**

The use of force, including deadly force, involving a drone is justified under Penal Code Chapter 9, Subchapter E, only if:

- 1. At the time the use of force occurred, the actor was employed by a law enforcement agency;**
- 2. The use of force would have been justified under another provision of Subchapter E and did not involve the use of deadly force by means of an autonomous drone; and**
- 3. Before the use of force occurred, the law enforcement agency employing the actor adopted and submitted to TCOLE a policy on the agency's use of force by means of a drone, as required by Code of Criminal Procedure 2.33 and the use of force conformed to the requirements of that policy.**

Code of Criminal Procedure 2.33; Penal Code 9.54

Custodial
Interrogations

Unless good cause exists that makes electronic recording infeasible, in accordance with Code of Criminal Procedure Article 2.32, a law enforcement agency shall make a complete and contemporaneous electronic recording of any custodial interrogation that occurs in a place of detention and is of a person suspected of committing or charged with the commission of an offense under:

1. Penal Code 19.02 (murder);
2. Penal Code 19.03 (capital murder);
3. Penal Code 20.03 (kidnapping);
4. Penal Code 20.04 (aggravated kidnapping);
5. Penal Code 20A.02 (trafficking of persons);
6. Penal Code 20A.03 (continuous trafficking of persons);
7. Penal Code 21.02 (continuous sexual abuse of young child or ~~children~~disabled individual);
8. Penal Code 21.11 (indecent with a child);
9. Penal Code 21.12 (improper relationship between educator and student);
10. Penal Code 22.011 (sexual assault);
11. Penal Code 22.021 (aggravated sexual assault); or
12. Penal Code 43.25 (sexual performance by a child).

"Place of detention" means a police station or other building that is a place of operation for a law enforcement agency, including a municipal police department or county sheriff's department, and is owned or operated by the law enforcement agency for the purpose of detaining persons in connection with the suspected violation of a penal law. The term does not include a courthouse.

Code of Criminal Procedure Art. 2.32(b)

Eyewitness
Identification
Protocols

TCOLE shall establish a comprehensive education and training program on eyewitness identification, including material regarding variables that affect a witness's vision and memory, practices for minimizing contamination, and effective eyewitness identification protocols. Each law enforcement agency shall require each peace officer who is employed by the agency and who performs eyewitness identification procedures to complete the education and training. *Code of Criminal Procedure Art. 2.1386(b)–(c)*

Trauma-Informed Investigation Training	A postsecondary educational institution shall ensure each of its employed peace officers completes training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking. <i>Education Code 51.288; 19 TAC 3.12</i>
Notice to School	A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board who the agency believes is enrolled as a student in a public primary or secondary school for an offense listed in Code of Criminal Procedure 15.27(h) shall attempt to ascertain whether the person is so enrolled and provide the notice described by Code of Criminal Procedure 15.27. <i>Code of Criminal Procedure Art. 15.27</i>
Officer-Involved Injury or Death	“Officer-involved injury or death” means an incident during which a peace officer discharges a firearm causing injury or death to another. Not later than the 30th day after the date of an officer-involved injury or death, the law enforcement agency employing an officer involved in the incident must complete and submit a written or electronic report using the form created under Code of Criminal Procedure 2.139(b) to the office of the attorney general. The report must include all information described in Code of Criminal Procedure 2.139(b). Not later than the 30th day after the date of the occurrence of an incident in which, while a peace officer is performing an official duty, a person who is not a peace officer discharges a firearm and causes injury or death to the officer, the law enforcement agency employing the injured or deceased officer at the time of the incident must complete and submit a written or electronic report, using the form created under Code of Criminal Procedure 2.139(a), to the office of the attorney general. The report must include all information described in Code of Criminal Procedure 2.139(a). A law enforcement agency that fails to submit a required report on or before the seventh day after the date of receiving notice from the attorney general that the agency failed to submit the report is liable for a civil penalty in the amount of \$1,000 for each day after the seventh day that the agency fails to submit the report. Beginning on the day after the date of receiving notice from the attorney general, a law enforcement agency that, in the five-year period preceding the date the agency received the notice, has been liable for a civil penalty above or under this provision is liable for a civil penalty for each day the agency fails to submit the required report. The amount of a civil penalty under this provision is \$10,000 for the first day and \$1,000 for each additional day that the agency fails to submit the report.

Code of Criminal Procedure 2.139(a)(2), (c), .1395-.13951; 1 TAC 54.70

Complaint Against
Peace Officer

To be considered by the head of a fire department or local law enforcement agency, a complaint against a peace officer must be in writing and signed by the person making the complaint. A copy of a signed complaint against a peace officer appointed or employed by a political subdivision of this state shall be given to the officer within a reasonable time after the complaint is filed. Disciplinary action may not be taken against the officer unless a copy of the signed complaint is given to the officer. The officer may not be indefinitely suspended or terminated from employment based on the subject matter of the complaint unless the complaint is investigated and there is evidence to prove the allegation of misconduct.

On the commencement of an investigation by a law enforcement agency of a complaint that alleges that a peace officer employed by the department has engaged in racial profiling with respect to an individual and in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Gov't Code 614.022-.023; Code of Criminal Procedure 2.132(f)

[See DGBA, FLD, and GB for appeals]

Notice of Exposure
to Communicable
Disease

Each employer covered by workers' compensation insurance, including state and political subdivision employers, which employ emergency medical service employees, paramedics, firefighters, law enforcement officers or correctional officers must post the notice contained in 28 Administrative Code 110.108(d), in its workplace to inform employees about Health and Safety Code requirements which may affect qualifying for workers' compensation benefits following a work-related exposure to a reportable communicable disease. The notice shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where employees are likely to read the notice on a regular basis.
28 TAC 110.108(a)

Epinephrine Auto-
Injectors

A law enforcement agency may acquire and possess epinephrine auto-injectors, and a peace officer may possess and administer an epinephrine auto-injector in accordance with Occupations Code Chapter 1701, Subchapter O. *Occupations Code 1701.702(a)*

**Section II: Private
Security**

The security department of a private business or a political subdivision, including a college district, may not employ a commissioned security officer unless the security department provides notice to the Department of Public Safety (DPS) in the prescribed form of:

1. The security department's intent to employ a commissioned security officer and register with DPS under this section;
2. The name, title, and contact information of the person serving in the security department as the contact for the department; and
3. Any change in the information provided in item 1 or 2.

DPS shall maintain a registry of security departments that provide notice above and the name, title, and contact information of the person serving as contact for each security department.

Occupations Code 1702.181; 37 TAC 35.102

Section III: School Marshals

The governing board of a public junior college may appoint one or more school marshals. "School marshal" means a person who is appointed to serve as a school marshal by the governing board of a public junior college under Education Code 51.220, is licensed under Occupations Code 1701.260, and has powers and duties described by Code of Criminal Procedure Article 2.127. *Education Code 51.220(b); Occupations Code 1701.001(8)*

Regulations

Any written regulations adopted for purposes of Education Code 51.220(d) must **authorize a school marshal to carry a concealed handgun as described by Section 51.220(d) and require a handgun carried or possessed by a school marshal to be loaded only with frangible duty ammunition approved for that purpose by TCOLE and may not require a school marshal to store the handgun in a locked container while on duty. The regulations must** provide that a school marshal may carry a concealed handgun ~~as described by Section 51.220(d), except that if the primary duty of on the school marshal involves regular, direct contact with students, the marshal may not carry a concealed handgun but may~~ **marshal's person or** possess ~~a~~ **the** handgun on the physical premises of a public junior college campus in a locked and secured safe ~~within the marshal's immediate reach when conducting the marshal's primary duty. The written regulations must also require that a handgun carried by or within access of a school marshal may be loaded only with frangible duty ammunition approved for that purpose by TCOLE~~ **or other locked and secured location.** *Education Code 51.220(e)*

Authorization

A public junior college shall submit and receive approval for an application to appoint a person as a school marshal and upon authorization, notify TCOLE using approved format prior to appointment. *37 TAC 227.1(a)*

Eligibility

The governing board of a public junior college may select for appointment as a school marshal an applicant who is an employee of

the public junior college and certified as eligible for appointment under Occupations Code 1701.260 and 37 Administrative Code 227.3. An appointing entity shall not appoint or employ an ineligible person as a school marshal. The governing board may, but shall not be required to, reimburse the amount paid by the applicant to participate in the training program under Section 1701.260. *Education Code 51.220(c); Code of Criminal Procedure 2.127(d); 37 TAC 227.1(b), .3*

Authority A school marshal may make arrests and exercise all authority given peace officers under the Code of Criminal Procedure, subject to written regulations adopted by the governing board of a public junior college under Education Code 51.220 and only act as necessary to prevent or abate the commission of an offense that threatens serious bodily injury or death of students, faculty, or visitors on school premises. *Code of Criminal Procedure 2.127(a)*

Exception A school marshal may not issue a traffic citation for a violation of Transportation Code Chapter 521 or Transportation Code Title 7, Subtitle C. *Code of Criminal Procedure 2.127(b)*

Possession and Use of Handgun A school marshal appointed by the governing board of a public junior college may carry a **concealed handgun** or possess a handgun on the physical premises of a public junior college campus, but only:

1. In the manner provided by written regulations adopted by the governing board; and
2. At a specific public junior college campus as specified by the governing board.

Education Code 51.220(d)

A school marshal may ~~access~~**use** a handgun **the school marshal is authorized to carry or possess** under Education Code 51.220 only under circumstances that would justify the use of deadly force under Penal Code 9.32 or 9.33. *Education Code 51.220(f)*

Status Inactivated A public junior college employee's status as a school marshal becomes inactive on:

1. Expiration of the employee's school marshal license under Occupations Code 1701.260;
2. Suspension or revocation of the employee's license to carry a concealed handgun issued under Government Code Chapter 411, Subchapter H;
3. Termination of the employee's employment with the public junior college; or

4. Notice from the governing board of the public junior college that the employee's services as school marshal are no longer required.

Education Code 51.220(g)

Reports to TCOLE

A public junior college shall:

1. Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the appointing entity;
2. Report to TCOLE, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the appointing entity, TCOLE standards, another state agency, or under other law; and
3. Immediately report to TCOLE a school marshal's violation of any TCOLE standard, including the discharge of a firearm carried under the authorization of 37 Administrative Code Chapter 227 outside of a training environment.

37 TAC 227.1(a)

Requests for
Information
Regarding Marshals

If a parent or guardian of a student enrolled at a public junior college inquires in writing, the governing board of the public junior college shall provide the parent or guardian written notice indicating whether any employee of the public junior college is currently appointed a school marshal. The notice may not disclose information that is confidential under Education Code 51.220(h). *Education Code 51.220(i)*

*Identity
Confidential*

The identity of a school marshal appointed under this section is confidential, except as provided by Occupations Code 1701.260(j), and is not subject to a request under the Public Information Act, Government Code Chapter 552. *Education Code 51.220(h)*

No State Benefits

A school marshal is not entitled to state benefits normally provided by the state to a peace officer. *Code of Criminal Procedure 2.127(c)*

Records Retention

For five years, the appointing entity must retain documentation that it has met all requirements under law in a format readily accessible to TCOLE. This requirement does not relieve the appointing entity from retaining all other relevant records not otherwise listed. *37 TAC 227.1(c)*

The governing board of each state institution of higher education, including public junior colleges, may promulgate rules and regulations for the safety and welfare of students, employees, and property, and other rules and regulations it may deem necessary to carry out the provisions of Education Code Chapter 51, Subchapter E and the governance of the institution, providing for the operation and parking of vehicles on the grounds, streets, drives, alleys, and any other institutional property under its control, including but not limited to the following:

1. Limiting the rate of speed;
2. Assigning parking spaces and designating parking areas and their use and assessing a charge for parking;
3. Prohibiting parking as it deems necessary;
4. Removing vehicles parked in violation of institutional rules and regulations or law at the expense of the violator; and
5. Instituting a system of registration for vehicle identification, including a reasonable charge.

Education Code 51.202(a)

**Parking, Blocking, or
Impeding Traffic**

It shall be unlawful for any person to park a vehicle on any property under the control and jurisdiction of a state institution of higher education of this state, including a college district, except in the manner designated by the institution and in the spaces marked and designated by the governing board, or to block or impede traffic through any driveway of that property. All laws regulating traffic on highways and streets shall apply to the operation of vehicles within the property of the institution, except as may be modified in Education Code Chapter 51, Subchapter E. *Education Code 51.205*

**Vehicle Identification
Insignia**

Each public institution of higher education, including each college district, may provide for the issuance and use of suitable vehicle identification insignia. The institution may bar or suspend the permit of any vehicle from driving or parking on any institutional property for the violation of any rule or regulation promulgated by the board as well as for any violation of Education Code Chapter 51, Subchapter E. Reinstatement of the privileges may be permitted and a reasonable fee assessed. *Education Code 51.207(a)*

If the public institution of higher education campus is located in whole or part in an area in which a motor vehicle registered in the area is required to undergo a vehicle emissions inspection under Transportation Code Chapter 548, Subchapter F, the institution may not issue a permit to a student enrolled at the institution to park or drive a motor vehicle that is not registered in this state on

institutional property unless the institution has provided written notice to the student concerning requirements for vehicle emissions inspections pursuant to Transportation Code Chapter 548, Subchapter F. *Education Code 51.207(b)*

If the public institution of higher education campus is not covered by Education Code 51.207(b), the institution may not issue a permit to a student of the institution for driving or parking a motor vehicle on institutional property unless the institution provides written notice to the student that failure to register the vehicle in this state may violate state law if the owner of the vehicle resides in this state.

Each institution of higher education that maintains a campus police force shall adopt procedures for enforcing State of Texas vehicle inspection laws for vehicles parking or driving on the campus of the institution.

Education Code 51.207(d)–(e)

Parking Privileges of Disabled Veterans

This section applies to a vehicle that:

1. ~~Is being operated by or for the transportation of the person who registered the vehicle under Transportation Code 504.202(a) or a person described by Transportation Code 504.202(b) if the vehicle is registered under that subsection; and displays~~ **Displays** special license plates issued under Transportation Code 504.202**(b-1) and is being operated by or for the transportation of the person to whom the plates were issued**; or
2. Displays license plates issued by another state of the United States that indicate on the face of the license plates that the owner or operator of the vehicle is a disabled veteran of the U.S. armed forces.

A qualifying vehicle may be parked for an unlimited period in a parking space or area that is designated specifically for persons with physical disabilities on the property of an institution of higher education, including a college district, regardless of whether a permit is generally required for the use of the space or area. An institution of higher education may require the vehicle to display a parking permit issued by the institution specifically for the purpose of implementing this section but may not charge a fee for the permit. This section does not entitle a person to park a qualifying vehicle in a parking space or area that has not been designated specifically for persons with physical disabilities on the property of the institution if the vehicle has not been granted or assigned a parking permit required by the institution.

This section does not apply to a parking space or area located in:

1. A controlled access parking facility if at least 50 percent of the number of parking spaces or areas designated specifically for persons with physical disabilities on the property of the institution of higher education are located outside a controlled access parking facility;
2. An area temporarily designated for special event parking; or
3. An area where parking is temporarily prohibited for health or safety concerns.

~~Transp~~**Trans.** Code 681.008(a)–(a-2)

Parking and Traffic Tickets

In connection with traffic and parking violations, only the officers authorized to enforce the provisions of Education Code Chapter 51, Subchapter E have the authority to issue and use traffic tickets and summons of the type used by the Texas Highway Patrol, with any changes that are necessitated by reason of Subchapter E. On the issuance of any parking or traffic ticket or summons, the same procedures shall be followed as prevail in connection with the use of parking and traffic violation tickets by the cities of this state and the Texas Highway Patrol. Nothing in Subchapter E restricts the application and use of regular arrest warrants. *Education Code 51.206*

Booting

A local authority, including a college district, may regulate, in areas in which the entity regulates parking or traffic, booting activities, including:

1. Operation of booting companies and operators that operate on a parking facility;
2. Any permit and sign requirements in connection with the booting of a vehicle; and
3. Fees that may be charged in connection with the booting of a vehicle.

Regulations adopted under this section must:

1. Incorporate the requirements of Occupations Code 2308.257 and 2308.258;
2. Include procedures for vehicle owners and operators to file a complaint with the local authority regarding a booting company or operator; and
3. Provide for the imposition of a penalty on a booting company or operator for a violation of Section 2308.258.

Occupations Code 2308.2085

Exception

This section shall not apply to a person who, while exercising a statutory or contractual lien right with regard to a vehicle installs or removes a boot or controls, installs, or directs the installation and removal of one or more boots; or a commercial office building owner or manager who installs or removes a boot in the building's parking facility. *Occupations Code 2308.004*

**Speed Limits on
Roads by a Campus**

The governing body of an institution of higher education, including a college district board of trustees, may request that the governing body of a municipality or commissioners court of the county in which the institution is located or the Texas Transportation Commission hold a public hearing at least once each calendar year to consider prima facie speed limits on an eligible highway or road.

On request of the governing body of a school or institution of higher education following a public hearing held under this section, the commissioners court, municipal governing body, or Texas Transportation Commission, as applicable, shall conduct an engineering and traffic investigation for the highway or road that is the subject of the request. Following each public hearing held under this section, the governing body of a school or institution of higher education may make only one request for an engineering and traffic investigation.

~~Transp~~**Trans.** Code 545.357

**Transportation
Network Companies**

Regulations

The regulation of transportation network companies, drivers logged in to a digital network, and vehicles used to provide digitally prearranged rides is an exclusive power and function of this state and may not be regulated by a municipality or other local entity, including by:

1. Imposing a tax;
2. Requiring an additional license or permit;
3. Setting rates;
4. Imposing operational or entry requirements; or
5. Imposing other requirements.

This section does not affect the ability of a local authority, including a college district to:

1. Take an action described by Transportation Code 542.202 or otherwise authorized by Transportation Code Title 7, Subtitle C that allows the local authority to adopt traffic rules in the ju-

jurisdiction of the authority if the rules are applied to transportation network company vehicles and drivers in the same manner as non-transportation network company vehicles and drivers; or

2. Enforce a provision of Transportation Code Title 7, Subtitle C or any other state law relating to the operation of traffic on public roads.

Gov't Code 2402.003(a), (e)

Special Events

A municipality or other local entity may contract with a transportation network company operating in the municipality's or entity's jurisdiction for the coordination of large events occurring in the municipality's or entity's jurisdiction. The agreement:

1. May not exclude a transportation network company holding a permit under Government Code Chapter 2402 from providing services at the event; and
2. Must have comparable terms for each company providing services at the event.

Gov't Code 2402.115

**Automated Vehicles
and Driving Systems**

A political subdivision of this state, including a college district, or a state agency may not impose a franchise or other regulation related to the operation of an automated motor vehicle or automated driving system.

"Automated driving system" means hardware and software that, when installed on a motor vehicle and engaged, are collectively capable of performing, without any intervention or supervision by a human operator:

1. All aspects of the entire dynamic driving task, as defined by Transportation Code 545.451(3) for the vehicle on a sustained basis; and
2. Any fallback maneuvers necessary to respond to a failure of the system.

"Automated motor vehicle" means a motor vehicle on which an automated driving system is installed.

~~Transp~~**Trans.** Code 545.451(1)–(2), .452(b)

**Personal Delivery
and Mobile Carrying
Devices**

The operation of a personal delivery or mobile carrying device in a pedestrian area or on the side or shoulder of a highway is governed exclusively by Transportation Code Chapter 552A, Subchapter A and any applicable regulations adopted by a local authority that are not inconsistent with Subchapter A.

A local authority may regulate the operation of a personal delivery or mobile carrying device on a highway or in a pedestrian area in a manner not inconsistent with Transportation Code Chapter 552A, Subchapter A. This section does not affect the authority of a local authority's peace officers to enforce the laws of this state relating to the operation of a personal delivery or mobile carrying device.

~~Transp~~**Trans**. Code 552A.0002(a), .0009

Definitions

"Mobile carrying device" means a device that transports cargo while remaining within 25 feet of a human operator and is equipped with technology that allows the operator to actively monitor the device.

"Personal delivery device" means a device that is manufactured primarily for transporting cargo in a pedestrian area or on the side or shoulder of a highway and is equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.

~~Transp~~**Trans**. Code 552A.0001(3), (5)

**Photographic Traffic
Signal Enforcement
System**

Notwithstanding any other law, a local authority may not implement or operate a photographic traffic signal enforcement system with respect to a highway or street under the jurisdiction of the authority.

Notwithstanding any other law, a local authority may not issue a civil or criminal charge or citation for an offense or violation based on a recorded image produced by a photographic traffic signal enforcement system.

~~Transp~~**Trans**. Code 707.020(a), .021

Definitions

"Photographic traffic signal enforcement system" means a system that consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic-control signal and is capable of producing at least two recorded images that depict the license plate attached to the front or the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic-control signal.

"Traffic-control signal" means a manual, electric, or mechanical device that alternately directs traffic to stop and to proceed.

~~Transp~~**Trans**. Code 541.304(3), 707.001(3), (5)

Definitions

Campus	"Campus" means all land and buildings owned or leased by an institution of higher education. <i>Gov't Code 411.2031(a)(1), .2032</i>
Firearm	A "firearm" is any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. <i>Penal Code 46.01(3)</i>
Location-Restricted Knife	A "location-restricted knife" is a knife with a blade over five and one-half inches. <i>Penal Code 46.01(6)</i>
Club	A "club" is an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes, but is not limited to, a blackjack, nightstick, mace, and tomahawk. <i>Penal Code 46.01(1)</i>
Prohibited Weapons	"Prohibited weapons" include: - Any of the following items, unless the item is registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or otherwise not subject to that registration requirement or unless the item is classified as a curio or relic by the U.S. Department of Justice: - An explosive weapon (any explosive or incendiary bomb, grenade, rocket, or mine that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon). <i>Penal Code 46.01(2)</i> - A machine gun (any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger). <i>Penal Code 46.01(9)</i> - A short-barrel firearm (rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches). <i>Penal Code 46.01(10)</i> - Armor-piercing ammunition (handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used primarily in pistols and revolvers). <i>Penal Code 46.01(12)</i>

3. A chemical dispensing device (a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of dispensing a substance capable of causing an adverse psychological or physiological effect on a human being). *Penal Code 46.01(14)*
4. A zip gun (a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance). *Penal Code 46.01(16)*
5. A tire deflation device (a device, including a caltrop or spike strip, that, when driven over, impedes or stops the movement of a wheeled vehicle by puncturing one or more of the vehicle's tires; it does not include a traffic control device that is designed to puncture one or more of a vehicle's tires when driven over in a specific direction, and has a clearly visible sign posted in close proximity to the traffic control device that prohibits entry or warns motor vehicle operators of the traffic control device). *Penal Code 46.01(17)*
- ~~6. A firearm silencer (any device designed, made, or adapted to muffle the report of a firearm), unless the firearm silencer is classified as a curio or relic by the United States Department of Justice or the actor otherwise possesses, manufactures, transports, repairs, or sells the firearm silencer in compliance with federal law. *Penal Code 46.01(4)*~~
- 7.6. An improvised explosive device (a completed and operational bomb designed to cause serious bodily injury, death, or substantial property damage that is fabricated in an improvised manner using nonmilitary components. The term does not include unassembled components that can be legally purchased and possessed without a license, permit, or other governmental approval or an exploding target that is used for firearms practice, sold in kit form, and contains the components of a binary explosive). *Penal Code 46.01(19)*

Penal Code 46.05(a)

Premises

"Premises" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. *Penal Code 46.03(c)(1), .035(f)(34); Gov't Code 411.2031(a)(3)*

General Provisions

A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, or prohibited weapon ~~listed in Penal Code 46.05(a):~~

~~1.~~ ~~On~~ the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, unless:

~~a.~~ 1. Pursuant to written regulations or written authorization of the institution; or

~~b.~~ 2. The person possesses or goes with a concealed handgun that the person is licensed to carry under ~~Subchapter H, Chapter 411, Government Code~~ **Chapter 411, Subchapter H**, and no other weapon to which this section applies, on the premises of an institution of higher education or private or independent institution of higher education, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution; ~~or.~~

~~On~~ **Penal Code 46.03(a)(1)**

Polling Place

~~2.~~ **A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, or prohibited weapon on the premises of a polling place on the day of an election or while early voting is in progress.**

Penal Code 46.03(a)(2)

Persons Under 21 or Who Committed Certain Felonies

Handgun

A person commits an offense if the person:

- 1. Intentionally, knowingly, or recklessly carries on or about his or her person a handgun;**
- 2. At the time of the offense:**
 - a. Is younger than 21 years of age; or**
 - b. Has been convicted of an offense under Penal Code 22.01(a)(1), 22.05, 22.07, or 42.01(a)(7) or (8) committed in the five-year period preceding the date the instant offense was committed; and**
- 3. Is not on the person's own premises or premises under the person's control or inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.**

Penal Code 46.02(a)

***Location-
Restricted Knife***

A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a location-restricted knife, is younger than 18 years of age at the time of the offense, and is not:

1. On the person's own premises or premises under the person's control;
2. Inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control; or
3. Under the direct supervision of a parent or legal guardian of the person.

Penal Code 46.02(a-4)

**Sporting or
Interscholastic
Events**

Handguns

~~A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Government Code Chapter 411, Subchapter H, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, on or about the license holder's person, on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event.~~

~~The prohibition does not apply on the premises where a collegiate sporting event is taking place if the actor was not given effective notice under Penal Code 30.06.~~

~~***Penal Code 46.035(b), (l)***~~

Knives

A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a **firearm**, location-restricted knife, **club, or prohibited weapon** on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a **firearm**, location-restricted knife, **club, or prohibited weapon** is used in the event. ~~***Penal Code 46.03(a-1)***~~

The prohibition does not apply if the actor carries a handgun on a premises where a collegiate sporting event is taking place, holds a license to carry a handgun issued under Government Code Chapter 411, Subchapter H, and was not given effective notice under Penal Code 30.06 or 30.07 of this Code, as applicable.

Penal Code 46.03(a)(8), .15(q)

Board Meetings

A ~~license holder~~ **person** commits an offense if the ~~license holder~~ **person** intentionally, knowingly, or recklessly ~~carries a handgun under the authority of Government Code Chapter 411, Subchapter H, regardless of whether the handgun is concealed~~ **possesses or carried in a shoulder** ~~goes with a firearm, location-restricted knife, club, or belt holster~~ **prohibited weapon** in the room or rooms where a meeting of a governmental entity is held ~~and~~, if the meeting is an open meeting subject to Government Code Chapter 551 and **if** the entity provided notice as required by that ~~chapter~~ **Chapter** [see BD]. ~~This offense does not apply if the actor was not given effective notice under Penal Code 30.06 or 30.07. Penal Code 46.035(c), (i)03(a)(14)~~

Exceptions

Penal Code 46.02 and 46.03 ~~does~~ **do** not apply to the officers and officials listed in Penal Code 46.15(a), including:

1. Peace officers and ~~neither Section 46.02 or~~ Section 46.03 ~~does not prohibit~~ **prohibits** a peace officer from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer is engaged in the actual discharge of the officer's duties while carrying the weapon;
2. An honorably retired peace officer, qualified retired law enforcement officer, federal criminal investigator, or former reserve law enforcement officer who holds a certificate of proficiency issued under Occupations Code 1701.357 and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that verifies that the officer is:
 - a. An honorably retired peace officer;
 - b. A qualified retired law enforcement officer;
 - c. A federal criminal investigator; or
 - d. A former reserve law enforcement officer who has served in that capacity not less than a total of 15 years with one or more state or local law enforcement agencies;
3. The attorney general or a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun;
4. An assistant United States attorney, assistant attorney general, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun; and

5. A person who is volunteer emergency services personnel, as defined by Penal Code 46.01(18), if the person is carrying a handgun under the authority of Government Code Chapter 411, Subchapter H and engaged in providing emergency services.

~~Penal Code 46.15(a)~~

Penal Code 46.02 and 46.03(a)(14) (board meetings) do not apply to the persons listed in Penal Code 46.15(b), including a person who:

1. Is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Government Code 437.001;
2. Is traveling;
3. Is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, motor vehicle, or watercraft, if the weapon is a type commonly used in the activity;
4. Holds a security officer commission issued by the Texas Private Security Board, if the person is engaged in the performance of the person's duties as an officer commissioned under Occupations Code Chapter 1702 or is traveling to or from the person's place of assignment and is wearing the officer's uniform and carrying the officer's weapon in plain view;
5. Is carrying a license issued under Government Code Chapter 411, Subchapter H, to carry a handgun and a handgun in a concealed manner or in a holster; or
6. Is a student in a law enforcement class engaging in an activity required as part of the class, if the weapon is a type commonly used in the activity and the person is on the immediate premises where the activity is conducted or en route between those premises and the person's residence and is carrying the weapon unloaded.

Penal Code 46.02 and 46.03(a)(1) and (a)(2) do not apply to a person who carries a handgun if:

1. The person carries the handgun on the premises, as defined by the statute providing the applicable offense, of a location operating as an emergency shelter during a state of disaster declared under Government Code 418.014 or a

local state of disaster declared under Government Code 418.108;

2. The owner, controller, or operator of the premises or a person acting with the apparent authority of the owner, controller, or operator, authorized the carrying of the handgun;
3. The person carrying the handgun complies with any rules and regulations of the owner, controller, or operator of the premises that govern the carrying of a handgun on the premises; and
4. The person is not prohibited by state or federal law from possessing a firearm.

Penal Code 46.02 and 46.03 do not apply to a first responder, as defined by Penal Code 46.01, who:

1. Was carrying a handgun in a concealed manner or in a shoulder or belt holster;
2. Holds an unexpired certificate of completion under Government Code 411.184 at the time of engaging in the applicable conduct;
3. Was engaged in the actual discharge of the first responder's duties while carrying the handgun; and
4. Was employed or supervised by a municipality or county to which Local Government Code Chapter 179 applies.

Penal Code 46.01(20), .15(a)–(b), (l)–(m)

Establishment

An establishment serving the public may not prohibit or otherwise restrict a peace officer or special investigator from carrying on the establishment's premises a weapon that the peace officer or special investigator is otherwise authorized to carry, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon.

"Establishment serving the public" means:

1. A hotel, motel, or other place of lodging;
2. A restaurant or other place where food is offered for sale to the public;
3. A retail business or other commercial establishment or an office building to which the general public is invited;

4. A sports venue; and
5. Any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited.

"Sports venue" means an arena, coliseum, stadium, or other type of area or facility that is primarily used or is planned for primary use for one or more professional or amateur sports or athletics events and for which a fee is charged or is planned to be charged for admission to the sports or athletics events, other than occasional civic, charitable, or promotional events.

Code of Criminal Procedure Art. 2.1305

Defense to
Prosecution

Notice

General

A person may provide notice that firearms and other weapons are prohibited under Penal Code 46.03 on the premises or other property, as applicable, by posting a sign at each entrance to the premises or other property that:

1. Includes language that is identical to or substantially similar to the following: "Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property";
2. Includes the language described by item 1 in both English and Spanish;
3. Appears in contrasting colors with block letters at least one inch in height; and
4. Is displayed in a conspicuous manner clearly visible to the public.

It is a defense to prosecution under Penal Code 46.035(b)(1), (2), (4), and (5) and (c)03 that the actor, at:

1. Carries a handgun on a premises or other property on which the carrying of a weapon is prohibited under that section;
2. Personally received from the owner of the property, or from another person with apparent authority to act for the owner, notice that carrying a firearm or other weapon on the premises or other property, as applicable, was prohibited; and
3. Promptly departed from the premises or other property.

The defense does not apply if:

1. A sign described by Penal Code 46.15(o) was posted prominently at each entrance to the premises or other property, as applicable; or
2. At the time of the ~~commission of the~~ offense, ~~was:~~ the actor knew that carrying a firearm or other weapon on the premises or other property was prohibited.
- ~~1. A judge or justice of a federal court;~~
- ~~2. An active judicial officer, as defined by Government Code 411.201;~~
- ~~3. The attorney general or a United States attorney, assistant United States attorney, assistant attorney general, district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney; or~~
- ~~4. A bailiff designated by the active judicial officer and engaged in escorting the officer.~~

Penal Code 46.03(m)–(o)

**Criminal
Trespass**

A person may provide notice that firearms are prohibited on the property by posting a sign at each entrance to the property that:

1. Includes language that is identical to or substantially similar to the following: "Pursuant to Section 30.05, Penal Code (criminal trespass), a person may not enter this property with a firearm";
2. Includes the language described by item 1 in both English and Spanish;
3. Appears in contrasting colors with block letters at least one inch in height; and
4. Is displayed in a conspicuous manner clearly visible to the public.

It is a defense to prosecution under ~~Section 46.035(b) and (c) that the actor is volunteer emergency services personnel, as defined by Penal Code 46.01(18), engaged in providing emergency services.~~ **this section that:**

~~Penal Code 46.035(h-1), (m)~~

1. The basis on which entry on the property or land or in the building was forbidden is that entry with a handgun was forbidden; and

2. The person was carrying a license issued under Government Code Chapter 411, Subchapter H, to carry a handgun and a handgun in a concealed manner or in a holster.

An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200 if the person enters the property, land, or building with a firearm or other weapon and the sole basis on which entry on the property or land or in the building was forbidden is that entry with a firearm or other weapon was forbidden, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, land, or building with the firearm or other weapon, the actor:

1. Personally received from the owner of the property or another person with apparent authority to act for the owner notice that entry with a firearm or other weapon was forbidden, as given through:
 - a. Oral or written communication by the owner or someone with apparent authority to act for the owner; or
 - b. If the actor is unable to reasonably understand the notice described by item 1, other personal notice that is reasonable under the circumstances; and
2. Subsequently failed to depart.

Penal Code 30.05(b)(2), (c), (d-3), (f) [See also Penal Code 30.06 and 30.07, below]

Wrongful Exclusion
of Handgun License
Holder

A state agency or a political subdivision of the state, including a college district, may not take any action, including an action consisting of the provision of notice by a communication described by Penal Code 30.06 or 30.07 that states or implies that a license holder who is carrying a handgun under the authority of Penal Code Chapter 411, Subchapter H is prohibited from entering or remaining on a premise or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place by Penal Code 46.03 or ~~46.035~~ or other law. *Penal Code 411.209(a)*

A state agency or a political subdivision of the state that violates Penal Code 411.209(a) is liable for a civil penalty of:

1. Not less than \$1,000 and not more than \$1,500 for the first violation; and

2. Not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation.

Each day of a continuing violation of Penal Code 411.209(a) constitutes a separate violation.

Penal Code 411.209(b)–(c)

**Firearms and
Ammunition in
Private Vehicles**

An institution of higher education, including a college district, in this state may not adopt or enforce any rule, regulation, or other provision or take any other action, including posting notice under Penal Code 30.06 or 30.07, prohibiting or placing restrictions on the storage or transportation of a firearm or ammunition in a locked, privately owned or leased motor vehicle by a person, including a student enrolled at that institution, who holds a license to carry a handgun under Government Code Chapter 411, Subchapter H and lawfully possesses the firearm or ammunition:

1. On a street or driveway located on the campus of the institution; or
2. In a parking lot, parking garage, or other parking area located on the campus of the institution.

Gov't Code 411.2032

**Carry by Employees
in Personal
Vehicles**

A public or private employer, including a college district, may not prohibit an employee who holds a license to carry a handgun under Government Code Chapter 411, Subchapter H, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the college district provides for employees. *Labor Code 52.061*

Labor Code 52.061 does not apply to a vehicle owned or leased by a public or private employer and used by an employee in the course and scope of the employee's employment, unless the employee is required to transport or store a firearm in the official discharge of the employee's duties. *Labor Code 52.062(a)*

Section 52.061 does not authorize a person who holds a license to carry a concealed handgun under Government Code Chapter 411, Subchapter H, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition to possess a firearm or ammunition on any property where the possession of a firearm or ammunition is prohibited by state or federal law. Section 52.061 does not prohibit an employer from prohibiting an employee who holds a license to carry a handgun under Government Code Chapter 411, Subchapter H, or who otherwise lawfully possesses a firearm, from

possessing a firearm the employee is otherwise authorized by law to possess on the premises of the employer's business. *Labor Code 52.062(a)–(b)*

~~"Premises" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. *Penal Code 46.035(f)(3)*~~

Immunity

Except in cases of gross negligence, a public or private employer, or the employer's principal, officer, director, employee, or agent, is not liable in a civil action for personal injury, death, property damage, or any other damages resulting from or arising out of an occurrence involving a firearm or ammunition that the employer is required to allow on the employer's property under this section.

The presence of a firearm or ammunition on an employer's property under the authority of this section does not by itself constitute a failure by the employer to provide a safe workplace.

For purposes of Labor Code 52.063, a public or private employer, or the employer's principal, officer, director, employee, or agent, does not have a duty:

1. To patrol, inspect, or secure any parking lot, parking garage, or other parking area the employer provides for employees or any privately owned motor vehicle located in a parking lot, parking garage, or other parking area; or
2. To investigate, confirm, or determine an employee's compliance with laws related to the ownership or possession of a firearm or ammunition or the transportation and storage of a firearm or ammunition.

Labor Code 52.063

Concealed Carry

A license holder may carry a concealed handgun on or about the license holder's person while the license holder is on the campus of an institution of higher education or private or independent institution of higher education in this state. *Gov't Code 411.2031(b)*

Regulation of Carry

After consulting with students, staff, and faculty of the institution regarding the nature of the student population, specific safety considerations, and the uniqueness of the campus environment, the president or other chief executive officer of an institution of higher education in this state shall establish reasonable rules, regulations, or other provisions regarding the carrying of concealed handguns by license holders on the campus of the institution or on premises located on the campus of the institution.

An institution of higher education or private or independent institution of higher education in this state may establish rules, regulations, or other provisions concerning the storage of handguns in dormitories or other residential facilities that are owned or leased and operated by the institution and located on the campus of the institution.

The president or officer may not establish provisions that generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on the campus of the institution. The president or officer may amend the provisions as necessary for campus safety.

Gov't Code 411.2031(d)-(d-1)

Except as provided by Government Code 411.2031(d), (d-1), or (e), an institution of higher education or private or independent institution of higher education in this state may not adopt any rule, regulation, or other provision prohibiting license holders from carrying handguns on the campus of the institution. *Gov't Code 411.2031(c)*

The provisions take effect as determined by the president or officer unless subsequently amended by the board of regents or other governing board under Government Code 411.2031(d-2). *Gov't Code 411.2031(d-1)*

Board Review

Not later than the 90th day after the date that the rules, regulations, or other provisions are established as described by Government Code 411.2031(d-1), the board of regents or other governing board of the institution of higher education shall review the provisions. The board of regents or other governing board may, by a vote of not less than two-thirds of the board, amend wholly or partly the established provisions. If amended, the provisions are considered to be those of the institution as established under Government Code 411.2031(d-1). *Gov't Code 411.2031(d-2)*

Notice Carry
Prohibited

The institution must give effective notice under Penal Code 30.06 with respect to any portion of a premises on which license holders may not carry. *Gov't Code 411.2031(d-1)*

Distribution of
Regulations

An institution of higher education shall widely distribute the rules, regulations, or other provisions above to the institution's students, staff, and faculty, including by prominently publishing the provisions on the institution's internet website. *Gov't Code 411.2031(d-3)*

Report to
Legislature

Not later than September 1 of each even-numbered year, each institution of higher education in this state shall submit a report to the legislature and to the standing committees of the legislature with jurisdiction over the implementation and continuation of this section that:

1. Describes its rules, regulations, or other provisions regarding the carrying of concealed handguns on the campus of the institution; and
2. Explains the reasons the institution has established those provisions.

Gov't Code 411.2031(d-4)

Concealed Carry in
Violation of
Regulations

Notwithstanding Penal Code 46.03503(a) or Penal Code 46.0302(a-5), a license holder commits an offense if the license holder intentionally carries a concealed handgun on a portion of a premises located on the campus of an institution of higher education in this state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Government Code 411.2031(d-1) provided the institution gives effective notice under Penal Code 30.06 with respect to that portion. ~~Penal Code 46.035(a-3)~~

This provision does not apply to an individual who carries a handgun as a participant in a historical reenactment performed in accordance with the rules of the Texas Alcoholic Beverage Commission.

Penal Code 46.03(a-4), .15(j)

As Trespass

A handgun license holder commits an offense if the license holder carries a concealed handgun under the authority of Government Code Chapter 411, Subchapter H, on property of another without effective consent and received notice that entry on the property by a license holder with a concealed handgun was forbidden.

A person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

"Written communication" means:

1. A card or other document on which is written language identical to the following: "Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun"; or
2. A sign posted on the property that includes the language described above in both English and Spanish, appears in contrasting colors with block letters at least one inch in height, and is displayed in a conspicuous manner clearly visible to the public.

An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Penal Code 30.06(b) and subsequently failed to depart.

Penal Code 30.06(a)–(b), (c)(3), (d)

*Premise
Exception*

It is an exception to the application of Penal Code 30.06 that the property on which the license holder carries a handgun is owned or leased by a governmental entity, including a college district, and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Government Code 46.03-~~or 46.035~~. *Penal Code 30.06(e)*

Open Carry

A ~~license holder~~ **person** commits an offense if the ~~license holder~~ **person** carries a handgun ~~on or about the license holder's person under the authority of Government Code Chapter 411, Subchapter H~~ and intentionally displays the handgun in plain view of another person in a public place. It is an exception to the application of this prohibition that the handgun was partially or wholly visible but was carried in a ~~shoulder or belt holster by the license holder. Penal Code 46.035(a)~~ **holster. It is an exception to the application of this prohibition to a license holder that the handgun was partially or wholly visible but was in a holster, and the handgun and the license holder were in a motor vehicle.**

This provision does not apply to an individual who carries a handgun as a participant in a historical reenactment performed in accordance with the rules of the Texas Alcoholic Beverage Commission.

Penal Code 46.02(a-5), .15(j)

At an Institution of
Higher Education

Notwithstanding Penal Code 46.~~035~~**02(a-5)**, a license holder commits an offense if the license holder carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the license holder's person under the authority of ~~Subchapter H, Chapter 411,~~ Government Code **Chapter 411, Subchapter H**, and intentionally or knowingly displays the handgun in plain view of another person:

1. On the premises of an institution of higher education, including a college district, ~~or private or independent institution of higher education~~; or
2. On any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an

institution of higher education ~~or private or independent institution.~~

~~2.~~ This provision does not apply to an individual who carries a handgun as a participant in a historical reenactment performed in accordance with the rules of ~~higher education~~ the Texas Alcoholic Beverage Commission.

Penal Code 46.03503(a-12), .15(j)

As Trespass

A license holder commits an offense if the license holder openly carries a handgun under the authority of Government Code Chapter 411, Subchapter H on property of another without effective consent and received notice that entry on the property by a license holder openly carrying a handgun was forbidden.

A person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

“Written communication” means:

1. A card or other document on which is written language identical to the following: "Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly"; or
2. A sign posted on the property that:
 - a. Includes the language described above in item 1 in both English and Spanish;
 - b. Appears in contrasting colors with block letters at least one inch in height; and
 - c. Is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Penal Code 30.07(b) and subsequently failed to depart.

Penal Code 30.07(a)–(b), (c)(3), (d)

Premise
Exception

It is an exception to the application of Penal Code 30.07 that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or

other place on which the license holder is prohibited from carrying
the handgun under Penal Code 46.03 ~~or 46.035~~. *Penal Code*
30.07(e)

Registration

The owner of a motor vehicle, trailer, or semitrailer may ~~annually~~ apply for registration under Transportation Code 502.451 and is exempt from the payment of a registration fee under Transportation Code Chapter 502 if the vehicle is owned by and used exclusively in the service of the United States, this state, or a county, municipality, or school district in this state. An application for registration under this section must be made by a person having the authority to certify that the vehicle meets the exemption requirements.

~~Transp~~**Trans**. Code 502.453

Identification

A motor vehicle, trailer, or semitrailer that is the property of and used exclusively by any institution of higher education, including a college district, must have the name of the institution printed on the side of the vehicle. The inscription must be in a color sufficiently different from the body of the vehicle and must be of letters of sufficient height so that the lettering is plainly legible at a distance of not less than 100 feet. This requirement does not apply to a motor vehicle used by a peace officer commissioned under Education Code Chapter 51, Subchapter E or the chancellor or president of an institution of higher education. *Education Code 51.932*

**Human Trafficking
Signs at Buses and
Bus Stops**

A person, including a college district, who operates a transportation hub that is required to post a sign under Government Code 402.0351(c) shall post at the transportation hub the sign described by Government Code 402.0351(b), or, if applicable, a similar sign or notice as prescribed by other state law. "Transportation hub" includes a bus or bus stop. Gov't Code 402.0351(a), (a-1)(8), (b), (d); 1 TAC 54.81

Student Travel

Each governing board of an institution of higher education, including each college district, shall adopt a policy regulating travel that is undertaken by one or more students presently enrolled at the institution to reach an activity or event that is located more than 25 miles from the institution that is organized and sponsored by the institution and that is:

1. Funded by the institution, and the travel is undertaken using a vehicle owned or leased by the institution; or
2. Required by a student organization registered at the institution.

The governing board shall seek advice and comment from the faculty and students of the institution before adopting any policy. The policy must contain provisions that address:

1. Different modes of travel likely to be used by students; and
2. Safety issues related to student travel, including:

- a. Use of seat belts or other safety devices;
- b. Passenger capacity; and
- c. For the person providing transportation services:
 - (1) Qualifications and training required to operate that particular mode of travel; and
 - (2) Fatigue at the time of travel.

The governing board shall make the policy available to the public by publishing the policy in the college district's catalog and by any other method the board considers appropriate.

The board shall file a copy of the policy, and any amendments to that policy, with the Coordinating Board.

Education Code 51.950

**Transportation of
Public School
Students**

~~Driver Qualifications~~

A school bus operated by a junior college may also be used to transport public school students if it is convenient. If students of a local public school district are transported to and from school on a bus operated by a junior college and the operator is under 21 years of age, the selection of the operator must be approved by the principal of the public school whose students are transported on that bus. This section does not apply to the operator of a vehicle operated under a registration certificate issued under Transportation Code Chapter 643. ~~Transp~~**Trans**. Code 521.023(b)–(c)

Driver Qualifications

A person who is 18 years of age or older and who is licensed by the Texas Department of Public Safety to operate a motor vehicle as a school bus may operate the motor vehicle for the transportation of junior college students and employees to and from school or official school activities. This section does not apply to the operator of a vehicle operated under a registration certificate issued under Transportation Code Chapter 643. ~~Transp~~**Trans**. Code 521.023(a), (c)

**Use of Wireless
Devices**

An operator may not use a wireless communication device while operating a school bus or passenger bus with a minor passenger on the bus unless the bus is stopped. The prohibition does not apply to an operator of a school bus or passenger bus using a wireless communication device in the performance of the operator's duties as a bus driver and in a manner similar to using a two-way radio. ~~Transp~~**Trans**. Code 545.425(c), (e)

Commercial Insurance Plans

Associations of public employees and the governing boards and authorities of colleges are authorized to procure contracts with any insurance company authorized to do business in this state insuring their respective employees under a policy or policies of group health, accident, accidental death and dismemberment, disability income replacement, and hospital, surgical, and/or medical expense insurance, or a group contract providing for annuities. The dependents of any such employees may be insured under group policies which provide hospital, surgical, and/or medical expense insurance. *Insurance Code 3.51 1(a)*

Premium Payments

The premium for the policy may be paid wholly or partly from funds contributed by the employer, the individuals insured under the policy, or the insured employees who are members of the association of employees. The employer may deduct from an employee's salary the employee's contribution for the premiums if authorized to do so in writing by that employee. *Insurance Code 3.51, 1131.303*

Self-Insurance Fund

A governmental unit, including a college district, may establish a self-insurance fund to protect the governmental unit and its officers, employees, and agents from any insurable risk or hazard. The governmental unit may issue public securities and use the proceeds for all or part of the fund or use any money available to the governmental unit for the fund.

The governmental unit may purchase reinsurance for a risk covered through the fund. Any law, including a regulation, requiring insurance may be satisfied by coverage provided through the fund. Any law, including a regulation, requiring a certificate of insurance or an insurance agent's signature, countersignature, or approval may be satisfied by a certificate of coverage issued on behalf of the governmental unit demonstrating that coverage is provided through the fund.

Gov't Code 2259.031

Risk-Retention Groups

A governmental unit, including a college district, may become a member of a risk retention group or purchasing group created under the Liability Risk Retention Act of 1986, 15 U.S.C. 3901 et. seq., to obtain insurance against an insurable risk. *Gov't Code 2259.061*

Designated Broker of Record

A junior college district may not use a designated broker of record to purchase insurance contracts with premiums of an aggregate value of \$50,000 or more for each 12-month period. If the district expends less than \$50,000, in the aggregate, on insurance premiums for each 12-month period, the district may use a designated broker of record to purchase insurance contracts, but the board shall ensure that the use of a designated broker of record is in the

district's best interest and select a designated broker of record in a manner it determines is consistent with good business management. [\[See CF\] Education Code 44.031; Atty. Gen. Op. JC-205 \(2000\) \(applying the purchasing limits in Education Code 44.031 consistent with Education Code 44.031\)](#)

**Disclosure of
Interested Parties**

A governmental entity or state agency may not enter into a contract with a business entity that requires an action or vote by the governing body of the entity or agency before the contract may be signed, has a value of at least \$1 million, or is for services that would require a person to register as a lobbyist under Government Code Chapter 305, with certain exceptions, unless the business entity, in accordance with Government Code 2252.908 and rules adopted by the Texas Ethics Commission, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. [\[See ~~GC~~ GovernmentGL\] Gov't Code 2252.908](#)

Liability Insurance

The governing board of an institution of higher education may purchase insurance insuring the institution and its employees against any liability, risk, or exposure and covering the losses of any institutional property. The governing board may pay the cost of any insurance from any funds of the institution. Government Code 612.002(b) does not apply to an institution of higher education purchasing insurance under Education Code 51.966. *Education Code 51.966; Atty. Gen. Op. ~~H~~JH-70 (1973)*

**Tort Claims Act
Liability Insurance**

Each governmental unit other than a unit of state government may purchase insurance policies protecting the unit and the unit's employees against claims for property damage, personal injury, or death proximately caused by the wrongful act or omission or the negligence of an employee acting within the scope of the individual's employment if:

1. The property damage, personal injury, or death arises from the operation or use of a motor vehicle or motor-driven equipment; and
2. The employee would be personally liable to the claimant according to Texas law.

A unit of state government may purchase such a policy only to the extent that the unit is authorized or required to do so under other law.

Civ. Prac. & Rem. Code 101.021, .027(a)

**Tort Claims
Payments**

A local government, including a college district, may pay actual damages awarded against an employee of the local government if the damages result from an act or omission by the employee in the course and scope of employment for the local government and arise from a cause of action for negligence. The local government may also pay the court costs and attorney's fees awarded against an employee for whom the local government may pay damages under this section.

A local government may not pay damages awarded against an employee that arise from a cause of action for official misconduct or arise from a cause of action involving a willful or wrongful act or omission or an act or omission constituting gross negligence.

Civ. Prac. & Rem. Code 102.002

**Sexual Harassment
Claims**

A political subdivision, including a college district, may not use public money to settle or otherwise pay a sexual harassment claim made against a person who is:

1. An elected or appointed member of the governing body of the political subdivision; or
2. An officer or employee of the political subdivision.

Local Gov't Code 180.008(b)

Defense Counsel

A local government, including a college district, may provide counsel to represent a defendant for whom the local government may pay damages. The counsel provided by the local government may be the local government's regularly employed counsel, unless there is a potential conflict of interest between the local government and the defendant, in which case the local government may employ other legal counsel to defend the suit. *Civ. Prac. & Rem. Code 102.004*

Mold Remediation

A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed if a certificate of mold damage remediation has been issued for the property, the property is owned or occupied by a governmental entity, including a college district, and the decision to occupy was made by the owner, occupier, or any person authorized by the owner or occupier to make the decision. *Occupations Code 1958.304; 16 TAC 78.150(e)*

**For Law
Enforcement Motor
Vehicles**

The governing body of a political subdivision, including a college district, shall provide for insuring each law enforcement officer appointed or employed by the political subdivision against liability to third persons arising out of the officer's operation of a motor vehicle owned, leased, or otherwise controlled by the political subdivision at any time the officer is authorized to operate the vehicle, including times that the officer is authorized to operate the vehicle while off duty. The motor vehicle liability coverage must be in amounts not less than those required by Transportation Code Chapter 601, Subchapter D to establish financial responsibility. A political subdivision may satisfy this requirement by:

1. Electing to be self-insured;
2. Entering into a risk retention group, risk management pool, or interlocal contract with other political subdivisions; or
3. Providing for coverage by an insurance company authorized to write motor vehicle liability insurance coverage.

The policy may exclude coverage for operation of a motor vehicle in the commission of a criminal offense other than a traffic offense.

Gov't Code 612.005

Note: For information on procuring goods and services under Education Code Chapter 44, including the delegation of authority and pursuit of injunctions, see CF(LEGAL). For information on expenditures using federal funds, see CAAB. For information on providing notice to the Legislative Budget Board (LBB) regarding contracts ~~exceeding \$50,000~~, see GGC.

	Education Code Chapter 44, Subchapter B, applies to junior college districts. <i>Education Code 44.0311(a)</i>
Board Authority	A governmental entity, including a college district, may adopt rules as necessary to implement Government Code Chapter 2269. <i>Gov't Code 2269.051</i>
Delegation of Authority	The governing body of a governmental entity 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 governmental entity 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. <i>Gov't Code 2269.053</i>
Contracts Valued at or Above \$50,000	Except as provided by Education Code Chapter 44, Subchapter B, all college district contracts valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method that provides the best value for the district: [See also CF] 1. An interlocal contract. [See CF] 2. Competitive bidding. [See CMA] 3. Competitive sealed proposals. [See CMB] 4. Construction manager-agent method. [See CMC] 5. Construction manager-at-risk method. [See CMD] 6. Design-build method. [See CME] 7. The reverse auction procedure as defined by Government Code 2155.062(d). [See CF] <i>Education Code 44.031(a); Gov't Code Ch. 2269</i>
Selecting a Contracting Method	The governing body of a governmental entity 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 governmental entity. <i>Gov't Code 2269.056(a)</i>
Exceptions	
<i>Emergency Damage or Destruction</i>	If school equipment, a school facility, or a portion 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 of trustees 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. <i>Education Code 44.031(h)</i>
<i>Contracts Requiring a Bond</i>	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]. <i>Gov't Code 2253.021(h)</i>
Public Notice	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 the 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. <i>Education Code 44.031(g); Gov't Code 2269.052(a)–(b)</i>
Contract Selection Criteria	In determining the award of a contract, the governmental entity shall: 1. Consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and 2. Consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women- or minority-owned, small, or disadvantaged businesses. In determining the award of a contract, the governmental entity 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 governmental entity 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 Bidder**

A governmental entity, including a college district, may not award a governmental contract for general construction, an improvement, a service, or a public works project or for a 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 nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located or the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed. ~~Gov't Code 2252.001-.002~~

This requirement does not apply to a contract involving federal funds. A governmental entity shall use the information published by the comptroller in the Texas Register to evaluate the bid of a nonresident bidder.

*Gov't Code 2252.003001-.004***Publishing Criteria**

The governmental entity 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, **and a detailed methodology for scoring each criterion**. Gov't Code 2269.056(b)

Contracts Valued at or Above \$1 Million

The contract requirements in Government Code Chapter 552, Subchapter J apply to an entity that is not a governmental body that executes a contract with a governmental body that:

1. Has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body; or
2. Results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body in a fiscal year of the governmental body.

Gov't Code 552.371(a) [See CF]

Contracts Prohibited

Scrutinized
Companies

A governmental entity, **including a college district**, may not enter into a governmental contract with a company that is identified on a list prepared and maintained by the comptroller under Government Code 806.051, 807.051, or 2252.153.

"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 a professional or consulting service subject to Government Code Chapter 2254.

Gov't Code 2252.001(3), .152

Companies that
Boycott Israel

This section applies only to a contract that:

1. Is between a governmental entity 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 governmental entity.

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

"Boycott Israel" has the meaning assigned by Government Code 808.001.

"Company" has the meaning assigned by Government Code 808.001, except that the term does not include a sole proprietorship.

Gov't Code ~~2270~~2271.001(1)–(2), .002

**Companies that
Boycott Energy
Companies**

This section applies only to a contract that:

1. **Is between a governmental entity and a company with 10 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 governmental entity.**

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

“Boycott energy company” has the meaning assigned by Government Code 809.001.

“Company” has the meaning assigned by Government Code 809.001, except that the term does not include a sole proprietorship.

Gov’t Code 2274.001(1)–(2), .002(a)–(b)

Exception

The above section does not apply to a governmental entity that determines the requirements of that section are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. *Gov’t Code 2274.002(c)*

Companies that Discriminate Against a Firearm Entity or Firearm Trade Association

This section applies only to a contract that:

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

A governmental entity may not enter into a contract with a company for the purchase of goods or services unless the contract contains a written verification from the company that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Gov’t Code 2274.002(a)–(b)

Definition

“Discriminate against a firearm entity or firearm trade association” means, with respect to the entity or association, to:

1. Refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;
2. Refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or

3. Terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

The term does not include:

1. The established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and
2. A company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:
 - a. To comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or
 - b. For any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

Gov't Code 2274.001(3)

Exceptions

The prohibition does not apply to a governmental entity that contracts with a sole-source provider or does not receive any bids from a company that is able to provide the written verification required by this section.

The prohibition does not apply to a contract entered into in connection with or relating to the issuance, sale, or delivery of notes under Government Code Chapter 404, Subchapter H or the administration of matters related to the notes, including the investment of note proceeds, as provided by Government Code 2274.003.

Gov't Code 2274.002(c), .003

**Contracts with
Foreign-Owned
Companies**

A governmental entity may not enter into a contract or other agreement relating to critical infrastructure in this state with a company:

1. If, under the contract or other agreement, the company would be granted direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the governmental entity for product warranty and support purposes; and
2. If the governmental entity knows that the company is:

- a. Owned by or the majority of stock or other ownership interest of the company is held or controlled by:
 - (1) Individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or
 - (2) A company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
- b. Headquartered in China, Iran, North Korea, Russia, or a designated country.

"Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

"Critical infrastructure" means the measures taken to protect a computer, computer network, computer system, or other technology infrastructure against unauthorized use or access.

"Designated country" means a country designated by the governor as a threat to critical infrastructure under Government Code 2274.0103.

Gov't Code 2274.0101(1), (2), (4), .0102(a)

Required Disclosures

Disclosure of
Interested Parties

A governmental entity or state agency may not enter into a contract with a business entity that requires an action or vote by the governing body of the entity or agency before the contract may be signed, has a value of at least \$1 million, or is for services that would require a person to register as a lobbyist under Government Code Chapter 305, with certain exceptions, unless the business entity, in accordance with Government Code 2252.908 and rules adopted by the Texas Ethics Commission, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. [See GL] *Gov't Code 2252.908*

Disclosures by
Purchasing
Personnel

Before a state agency, including a college district, may award a major contract, a contract that has a value of at least \$1 million, for the purchase of goods or services to a business entity, each of the state agency's purchasing personnel working on the contract must

disclose in writing to the administrative head of the state agency any relationship the purchasing personnel is aware about that the employee has with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds \$25,000, or other owner of the business entity who is within a degree described by Government Code 573.002, the third degree by consanguinity or within the second degree by affinity of the purchasing employee. The state auditor shall develop a form for use in reporting a specified relationship.

"Purchasing personnel" means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding contract terms or conditions on a major contract, who is to be awarded a major contract, preparation of a solicitation for a major contract, or evaluation of a bid or proposal.

Gov't Code 2262.001(4), .004

**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 the 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)*

Submission

A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery. *Gov't Code 2269.059*

**Electronic Bids or
Proposals**

A college district may receive bids or proposals through electronic transmission if the board of trustees of the college district 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 this chapter that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission. *Education Code 44.0313*

Selection

The governmental entity shall base its selection among offerors on applicable criteria listed for the particular method used. *Gov't Code 2269.056(b)*

**Making Evaluations
Public**

The governmental entity 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*

**Disclosure to
Offeror upon
Request**

Not later than the 30th day after the date a request is made by an offeror for documents related to the evaluation of the offeror's submission under Government Code 2269.060, the governmental entity shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission. [See CMB for competitive sealed proposal evaluations] Gov't Code 2269.060

**Consolidated
Insurance Program**

If a construction contract requires a person to enroll in a consolidated insurance program, the parties are subject to the disclosure requirements described by Insurance Code Chapter 151, Subchapter A.

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 governmental entity 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 governmental entity. The governmental entity shall select the services for which it contracts in accordance with Government Code 2254.004. *Gov't Code 2269.058*

**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 51.927. [See CH] *Education Code 51.927(k)*

**Professional
Services**

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 governmental entity, the governmental entity 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 under Occupations Code Chapter 1051 to engage in the practice of architecture:

1. A new building having construction costs exceeding \$100,000 that is to be constructed and owned by a political subdivision of this state and used for education, assembly, or office occupancy.
2. An alteration or addition having construction costs exceeding \$50,000 that is to be made to an existing building that is owned by a political subdivision of this state and is or will be used for education, assembly, or office occupancy and requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit.

This section does not prohibit an owner of a building from contracting with an architect or an engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand the scope of practice of an architect or engineer beyond the scope of practice that the architect or engineer is authorized to practice under Occupations Code Chapter 1001 or 1051.

Occupations Code 1051.101(1), .703; 22 TAC 1.212

**Registered
Engineer**

The following work is exempt from Occupations Code Chapter 1001:

1. A public work that involves electrical or mechanical engineering, if the contemplated expense for the completed project is \$8,000 or less; or

2. A public work that does not involve electrical or mechanical engineering, if the contemplated expense for the completed project is \$20,000 or less.

Occupations Code 1001.053; Atty. Gen. Op. ~~6~~WVC-791 (1966)

Certification for Purchases Through Purchasing Cooperatives

A local government 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 local government 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 Occupations Code Chapters 1001 or 1051; or
2. The plans and specifications required under Occupations Code Chapters 1001 and 1051 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)

Procuring Professional Services

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect. A college 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, in lieu of the methods provided by Education Code 44.031. *Education Code 44.031(f)*

A governmental entity, including a college 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.

"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, **or forensic science**;
2. Provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a

land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, ~~or~~ a registered nurse, **or a forensic analyst or forensic science expert**; 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, .003(a)

In procuring architectural, engineering, or land-surveying services, a governmental entity shall:

1. First select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
2. Then attempt to negotiate 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, the entity 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. The entity shall continue the process to select and negotiate with providers until a contract is entered into.

Gov't Code 2254.004

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

Certain Medical Services

If a governmental entity is procuring services provided in connection with the professional employment or practice of a physician, including a surgeon, or an optometrist or registered nurse and the number of contracts to be awarded under this section is not otherwise limited, the governmental entity may make the selection and award on the basis of:

1. **The provider's agreement to payment of a set fee, as a range or lump-sum amount; and**
2. **The provider's affirmation and the governmental entity's verification that the provider has the necessary occupational licenses and experience.**

Gov't Code 2254.008(a)

Professional
~~Service~~Services
Contract Exceeding
\$~~14~~50,000

A state agency, including a college district and other institutions of higher education, shall provide written notice to the LBB of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$~~14~~50,000. The notice must be on a form prescribed by the LBB and filed not later than the ~~tenth~~30th day after the date the agency enters into the contract. *Gov't Code 2254.006*

*Contracts for
Engineering or
Architectural
Services*

Required
Standard of
Care

A contract for engineering or architectural services to which a governmental agency 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 a governmental agency is a party, a provision establishing a different standard of care is void and unenforceable. If a contract contains a void and unenforceable provision, the standard of care described above applies.

Local Gov't Code 271.904(d)–(e)

Limitation on In-
demnification

A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency 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 governmental agency 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.

Except as provided by Local Government Code 271.904(c), a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency 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 governmental agency, the agency's agent, the agency's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the governmental agency exercises control. A covenant or promise may provide for the reimbursement of a governmental agency's reasonable attorney's fees in proportion to the engineer's or architect's liability.

Notwithstanding Local Government Code 271.904(b), a governmental agency may require in a contract for engineering or architectural services to which the governmental agency is a party that the engineer or architect name the governmental agency as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.

Local Gov't Code 271.904(a)–(c)

Criminal History

A person or business entity, with the exception of a publicly held corporation, that enters into a contract with a college district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. A college district may terminate a contract with a person or business if the district determines that the person or business entity failed to give such notice or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.
Education Code 44.034

Right to Work

When 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, the governmental entity:

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 any organization.

Gov't Code 2269.054

Accessibility

Each facility or part of a facility constructed by, on behalf of, or for the use of the college 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

A governmental entity that makes a public work contract with a prime contractor **or authorizes a nongovernmental entity leasing public property from the governmental entity to enter into a public work contract with a prime contractor** shall require the contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds must be executed by a corporate surety in accordance with Insurance Code 7.19-1. A bond executed for a public work contract with another governmental entity must be payable to and its form must be approved by the awarding governmental entity.

For a contract in excess of \$100,000, a performance bond shall be executed. The performance bond is solely for the protection of the governmental entity awarding the public work contract, in the amount of the contract, and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.

For a contract in excess of \$25,000, a payment bond shall be executed. The payment bond 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(a)–(e)

Failure to Obtain Payment Bond

If a governmental entity fails to obtain from a prime contractor a payment bond as required by Government Code 2253.021 the entity is subject to the same liability as a surety would have if the surety had issued a payment bond and if the entity had obtained the bond, and 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 contract were subject to Property Code Chapter 53, Subchapter J. *Gov't Code 2253.027*

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 under Government Code Chapter 2269, Subchapter G. [See CME for more information on design/build contracts, including bond amounts] *Gov't Code 2269.311(a)*

Bond for Insured Loss

A governmental entity 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, furnishes or has furnished

by a contractor, in accordance with Government Code Chapter 2253:

1. A performance bond as described by Government Code 2253.021(b) for the benefit of the governmental entity; and
2. A payment bond as described in Government Code 2253.021(c) for the benefit of the beneficiaries described by that subsection. If the payment bond is not furnished, the governmental entity is subject to the same liability that a surety would have if the surety had issued the payment bond and the governmental entity had required the bond to be provided.

The bonds must be furnished before the contractor begins work. It is an implied obligation under a contract of insurance for the insurance company to furnish the bonds.

Gov't Code 2253.022(a)–(c), (f)

Exception to Bond Requirement

Government Code 2253.022 does not apply to a governmental entity when a surety company is complying with an obligation under a bond that had been issued for the benefit of the governmental entity. *Gov't Code 2253.022(e)*

Prevailing Wage on Public Works

A worker, such as a laborer or mechanic, employed on a public work, exclusive of maintenance work, by or on behalf of a political subdivision, including a college district, shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with a political subdivision of the state or any officer or public body of a political subdivision of the state. *Gov't Code 2258.001, .021(3)*

For a contract for a public work awarded by a political subdivision of the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed or using the prevailing wage rate as determined by the U.S. Department of Labor.

The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents. A public body shall specify in the call for bids for the contract and in the contract itself the calculated prevailing wage rates. The public

body's determination of the general prevailing rates of per diem wages shall be final.

Gov't Code 2258.022

Enforcement

A public body awarding a contract, and an agent or officer of the public body, shall take cognizance of complaints of all violations of Government Code Chapter 2258, and withhold money forfeited or required to be withheld under this chapter from the payments to the contractor under the contract, except that the public body may not withhold money from other than the final payment without a determination by the public body that there is good cause to believe that the contractor has violated Chapter 2258.

On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023 by a contractor or subcontractor, a public body shall make an initial determination as to whether good cause exists to believe that the violation occurred. A public body must make its determination before the 31st day after the date the public body receives the information. A public body shall notify in writing the contractor or subcontractor and any affected worker of its initial determination.

Gov't Code 2258.051, .052(a)–(c)

Retainage and Reimbursement

A public body shall retain any amount due under the contract pending a final determination of the violation. A public body shall use any amounts retained under Government Code Chapter 2258 to pay the worker 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 as provided in the arbitrator's award. The public body may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made. *Gov't Code 2258.052(d), .056*

Penalty for Noncompliance

The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Government Code 2258.022 to a worker employed in the execution of the contract. A contractor or subcontractor who fails to pay the specified rates as required shall pay to the political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates specified in the contract. A public body awarding a contract shall specify this penalty in the contract. A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022. The public body shall use any

penalty money collected under this section to offset the costs incurred in the administration of Government Code Chapter 2258.
Gov't Code 2258.023

**Required Workers'
Compensation
Coverage**

A governmental entity that enters into a building or construction contract on a project, which includes the provision of all services related to a building or construction contract for a governmental entity, shall:

1. Include in the bid specifications all the duties and responsibilities of contractors pertaining to required workers' compensation coverages described in 28 Administrative Code 110.110(c)(7). [See CM(EXHIBIT)]
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 described in 28 Administrative Code 110.110(d). [See CM(EXHIBIT)]
3. Obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person's beginning work on the project. "Person providing services on the project" includes but is not limited to 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 contracts 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 contract. "Services" include, but are not limited to, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services 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.
4. Obtain from the contractor a new certificate of coverage showing extension of coverage.
5. Before the end of the coverage period, if the contractor's current certificate shows that the coverage period ends during the duration of the project.
6. 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.

7. Retain certificates of coverage on file for the duration of the project and for three years thereafter.
8. 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.
9. Use the prescribed language 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. [See CM(EXHIBIT) for prescribed language]

Labor Code 406.096; 28 TAC 110.110(a)(7)–(8), (c)

Exception

A sole proprietor, partner, or corporate executive officer of a business entity that elects to provide workers' compensation insurance coverage is entitled to benefits under that coverage as an employee unless the sole proprietor, partner, or corporate executive officer is specifically excluded from coverage through an endorsement to the insurance policy or certificate of authority to self-insure. *Labor Code 406.097; 28 TAC 110.110(i)*

Use of Student Fees in Construction

A junior college district facility constructed with student fees may be used only for junior college district purposes, as determined by the board. Student fees may not be used for construction, repair, or rehabilitation of a community center or junior college district auxiliary enterprise unless the enterprise serves as a student center or dormitory. *Education Code 130.124; Atty. Gen. Op. JM-139 (1984)*

Impermissible Practices

Violation of Purchasing Laws

An officer, employee, or agent of a college district who knowingly or with criminal negligence violates the purchasing laws found in Education Code Chapter 44 as described at Education Code 44.032 is subject to criminal penalties. [See CF] *Education Code 44.032*

Prohibition on Collective Bargaining Agreements

A governmental entity, including a college district, awarding a public work contract funded with state money, including the issuance of debt guaranteed by this 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 above 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

Enforcement Actions	Government Code Chapter 2269 may be enforced through an action for declaratory or injunctive relief filed not later than the ~~tenth~~ 15th calendar day after the date on which the contract is awarded. <i>Gov't Code 2269.452(a)</i>
Attorney Fees	A governmental contract may not provide for the award of attorney's fees to the governmental entity in a dispute in which the entity 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. <i>Gov't Code 2252.904(b)</i>
Public and Private Facilities and Infrastructure Partnerships	A governmental entity, including a college district, may enter into a partnership with a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities that serve a public need and purpose in accordance with the requirements of Government Code Chapter 2267. <i>Gov't Code Ch. 2267</i>

“Competitive sealed proposals” is a procurement method by which a governmental entity, including a college 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*

If a governmental entity 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 CM], which include the following steps:

1. Selecting a Contracting Method;
2. Giving Public Notice of the project;
3. Publishing 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 governmental entity.

Education Code 44.031(g); Gov’t Code 2269.052, .055, .056(a), (c), .058

Note: Terms in all capital letters, above, point to margin notes in the referenced policy.

**Request for
Proposals**

The governmental entity 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, ~~sched-
ule~~, and other information that a contractor may require to respond to the request. *Gov’t Code 2269.153(b)*

**Civil Works
Projects**

Except as provided by the provision below, for civil works projects, the weighted value assigned to price must be at least 50 percent of the total weighted value of all selection criteria. “Civil works project” has the meaning assigned by Government Code 2269.351. *Gov’t Code 2269.153(a), (c)*

**Lower Weighted
Value to Price in
Public Interest**

If the governing body of a governmental entity determines that assigning a lower weighted value to price is in the public interest, the governmental entity may assign to price a weighted value of not less than 36.9 percent of the total weighted value of all selection criteria. *Gov’t Code 2269.153(d)*

Architect / Engineer

The governmental entity shall select or designate an architect or engineer to prepare construction documents for the project. [See CM] *Gov’t Code 2269.152* ~~[See CM]~~

Opening Proposals

The governmental entity 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, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria. *Gov't Code 2269.154*

Selection

The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the selection criteria in the request for ~~proposals~~**proposal** and the weighted value for those criteria in the request for proposal and on its ranking evaluation.

The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity 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 the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity 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.~~154~~.155(a)-(c)

**Make Evaluations
Public**

Not later than the seventh business day after the date the contract is awarded, the governmental entity shall make the evaluations, including any scores, public and provide them to all offerors. Gov't Code 2269.155(d)

Electronic Transactions

The Uniform Electronic Transactions Act (UETA), Business and Commerce Code Chapter 322, and 1 Administrative Code Chapter 203, Subchapter C apply to transactions between parties each of which has agreed to conduct transactions by electronic means.

Pursuant to Business and Commerce Code 322.017, the Department of Information Resources (DIR) and the Texas State Library and Archives Commission jointly formed the UETA Task Force to create rules and develop the Guidelines for the Management of Electronic Transactions and Signed Records. The Guidelines for the Management of Electronic Transactions and Signed Records are applicable to institutions of higher education that send and accept electronic records and electronic signatures to and from other persons and to other institutions of higher education and state agencies that otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. These guidelines are available on the department's website.

Business and Commerce Code 322.005(b); 1 TAC 203.40, .43–.45

Electronic Signatures

An institution of higher education, including a college district, shall determine whether, and the extent to which, the institution will send and accept electronic or digital signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely on electronic or digital signatures. The institution may adopt rules and procedures governing the use of electronic or digital signatures.

To the extent of any conflict, this provision prevails over Business and Commerce Code Chapter 322, the UETA, and rules and guidelines adopted under that chapter.

Education Code 51.9336

Electronic Payments

An institution of higher education, including a college district, may make any payment through electronic funds transfer or by electronic pay card. *Education Code 51.012*

Application of Government Code Chapter 2054

Government Code Chapter 2054 does not apply to a public junior college or a public junior college district, except as necessary to comply with information security standards and for participation in shared technology services, including the electronic government project implemented under Subchapter I and statewide technology centers under Subchapter L. *Gov't Code 2054.0075*

Access to Electronic CommunicationsElectronic
Communication
Privacy Act

Except as otherwise provided in the Electronic Communication Privacy Act (ECPA), 18 U.S.C. 2510–22, a person commits an offense if the person:

1. Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;
2. Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:
 - a. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication;
 - b. Such device transmits communications by radio or interferes with the transmission of such communication;
 - c. Such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce;
 - d. Such use or endeavor to use takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or
 - e. Such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
3. Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the prohibited interception of a wire, oral, or electronic communication;
4. Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the prohibited interception of a wire, oral, or electronic communication; or
5. Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by 18 U.S.C. 2511(2)(a)(ii), 2511(2)(b)–(c), 2511(2)(e), 2516, and 2518; knowing or having reason to know that the information was

obtained through the interception of such a communication in connection with a criminal investigation; having obtained or received the information in connection with a criminal investigation; and with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation.

It shall not be unlawful for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the U.S. Constitution or laws of the United States or of any state.

18 U.S.C. 2511(1), (2)(d)

Stored Wire and
Electronic
Communications
and Transactional
Records Access Act

A college district must comply with the Stored Wire and Electronic Communications and Transactional Records Access Act, 18 U.S.C. 2701–12.

Whoever intentionally accesses without authorization a facility through which an electronic communication service is provided or intentionally exceeds an authorization to access that facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system commits an offense. *18 U.S.C. 2701(a)*

Exceptions

This section does not apply with respect to conduct authorized:

1. By the person or entity providing a wire or electronic communications service;
2. By a user of that service with respect to a communication of or intended for that user; or
3. By sections 18 U.S.C. 2703, 2704, or 2518.

18 U.S.C. 2701(c)

Definitions

*Electronic
Communication*

“Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce. *18 U.S.C. 2510(12)*

*Electronic
Storage*

“Electronic storage” means:

1. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

2. Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

18 U.S.C. 2510(17)

The term encompasses only the information that has been stored by an electronic communication service provider. Information that an individual stores to the individual's hard drive or cell phone is not in electronic storage under the statute. *Garcia v. City of Laredo*, 702 F.3d 788 (5th Cir. 2012)

*Electronic
Communications
System*

"Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications and any computer facilities or related electronic equipment for the electronic storage of such communications. *18 U.S.C. 2510(14)*

*Electronic
Communications
Service*

"Electronic communication service" means any service that provides to users thereof the ability to send or receive wire or electronic communications. *18 U.S.C. 2510(15)*

Facility

"Facility" includes servers operated by electronic communication service providers for the purpose of storing and maintaining electronic storage. The term does not include technology, such as cell phones and computers, that enables the use of an electronic communication service. *Garcia v. City of Laredo*, 702 F.3d 788 (5th Cir. 2012)

**Impeding Electronic
Mail Prohibited**

An electronic mail service provider may not intentionally impede the transmission of another person's electronic mail message based on the content of the message unless:

1. **The provider is authorized to block the transmission under Business and Commerce Code 321.114 or other applicable state or federal law; or**
2. **The provider has a good faith, reasonable belief that the message contains malicious computer code, obscene material, material depicting sexual conduct, or material that violates other law.**

"Electronic mail service provider" means a person who:

1. **Is authorized to transact business in this state;**
2. **Is an intermediary in transmitting or receiving electronic mail; and**
3. **Provides to an end user of an electronic mail service the ability to transmit or receive electronic mail.**

Business and Commerce Code 321.001(3), .054

Drones

Federal Law

“Small unmanned aircraft” means an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.

Small Unmanned Aircraft System

“Small unmanned aircraft system” (small UAS) means a small unmanned aircraft and its associated elements (including communication links and the components that control the small unmanned aircraft) that are required for the safe and efficient operation of the small unmanned aircraft in the national airspace system.

C.F.R. Title 14, Part 107 applies to the registration, airman certification, and operation of civil small UASs within the United States.

Part 107 also applies to the eligibility of civil small unmanned aircraft systems to operate over human beings in the United States. Part 107 does not apply to the following:

1. Air carrier operations;
2. Any aircraft subject to the provisions of 49 U.S.C. 44809;
3. Any operation that the holder of an exemption under Section 333 of Public Law 112–95 or 49 U.S.C. 44807 elects to conduct pursuant to the exemption, unless otherwise specified in the exemption; or
4. Any operation that a person elects to conduct under 14 C.F.R. Part 91 with a small ~~unmanned aircraft system~~ **UAS** that has been issued an airworthiness certificate.

*14 C.F.R. 107.1, .3*Recreational
Use

Except as provided in 49 U.S.C. 44809(e), and notwithstanding 49 U.S.C. Chapter 447, a person may operate a small unmanned aircraft without specific certification or operating authority from the Federal Aviation Administration (FAA) if the operation adheres to all of the following limitations:

1. The aircraft is flown strictly for recreational purposes.
2. The aircraft is operated in accordance with or within the programming of a community-based organization's set of safety guidelines that are developed in coordination with the FAA.
3. The aircraft is flown within the visual line of sight of the person operating the aircraft or a visual observer co-located and in direct communication with the operator.
4. The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft.

5. In Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport, the operator obtains prior authorization from the FAA administrator or designee before operating and complies with all airspace restrictions and prohibitions.
6. In Class G airspace, the aircraft is flown from the surface to not more than 400 feet above ground level and complies with all airspace restrictions and prohibitions.
7. The operator has passed an aeronautical knowledge and safety test described in 49 U.S.C. 44809(g) and maintains proof of test passage to be made available to the FAA administrator or law enforcement upon request.
8. The aircraft is registered and marked in accordance with 49 U.S.C. Chapter 441, and proof of registration is made available to the FAA administrator or a designee of the FAA administrator or law enforcement upon request.

49 U.S.C. 44809(a)

For the purposes of 49 U.S.C. 44809 a “recreational purpose” as distinguished in 49 U.S.C. 44809(a)(1) shall include an unmanned aircraft system operated by an institution of higher education for educational or research purposes.

The term “educational or research purposes”, with respect to the operation of an unmanned aircraft system by an institution of higher education, includes:

1. Instruction of students at the institution;
2. Academic- or research-related uses of unmanned aircraft systems that have been approved by the institution, including federal research;
3. Activities undertaken by the institution as part of research projects, including research projects sponsored by the federal government; and
4. Other academic activities approved by the institution.

49 U.S.C. 44809 note; Pub. L. 115–254, Div. B, Title III, 350 (Oct. 5, 2018)

State Law
*Regulation
Limited*

A political subdivision, including a college district, may not adopt or enforce any ordinance, order, or other similar measure regarding the operation of an unmanned aircraft. An ordinance, order, or other similar measure that violates this provision is void and unenforceable. *Gov’t Code 423.009(b), (d)*

- Exception A political subdivision may adopt and enforce an ordinance, order, or other similar measure regarding:
1. The use of an unmanned aircraft during a special event;
 2. The political subdivision's use of an unmanned aircraft; or
 3. The use of an unmanned aircraft near a facility or infrastructure owned by the political subdivision, if the political subdivision:
 - a. Applies for and receives authorization from the Federal Aviation Administration to adopt the regulation; and
 - b. After providing reasonable notice, holds a public hearing on the political subdivision's intent to apply for the authorization.

"Special event" means a festival, celebration, or other gathering that involves the reservation and temporary use of all or a portion of a public park, road, or other property of a political subdivision; and entertainment, the sale of merchandise, food, or beverages, or mass participation in a sports event; and requires a significant use or coordination of a political subdivision's services.

Gov't Code 423.009(a)(2), (c)

Privacy Law

It is lawful to capture an image using an unmanned aircraft in this state for the reasons listed in Government Code 423.002, including:

1. For the purpose of professional or scholarly research and development or for another academic purpose by a person acting on behalf of an institution of higher education or a private or independent institution of higher education, as those terms are defined by Education Code 61.003, including a person who:
 - a. Is a professor, employee, or student of the institution; or
 - b. Is under contract with or otherwise acting under the direction or on behalf of the institution;
2. With the consent of the individual who owns or lawfully occupies the real property captured in the image; or
3. From a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception.

Gov't Code 423.002(a)

Note: The following is an index of website posting requirements that are addressed in the legal reference material of the policy manual. The list is not all-inclusive. The list does not address postings that are required in response to a specific incident, postings required under special circumstances, or postings required under administrative procedures of an agency.

Required Internet Postings

A college district that maintains an internet website shall post the following:

1. The college district's Compact With Texans, under Government Code 2114.006. [See AFA]
2. On the first frame of the homepage and in a font that is larger than the font of the majority of the text on the home page, an accessible link to the college district's online resumes maintained on the Coordinating Board's internet website, under Education Code 51A.003. [See AFA]
3. The cost of attendance for a first-time entering full-time student in accordance with the uniform standards prescribed by the commissioner, under Education Code 61.0777 and 19 Administrative Code 21.2222. [See AFA]
4. In a prominent location that is not more than three hyperlinks from the website's home page, a link to the postsecondary and career information posted on the Texas Education Agency's internet website, under Education Code 7.040. [See AFA]
5. Each elected officer, under Government Code 2051.452201. [See BB]
6. The date and location of the next board member election, under Government Code 2051.452201. [See BBB]
7. An election notice, under Election Code 85.007. [See BBB]
8. For at least one year before the election day, the requirements and deadline for filing for candidacy, under Government Code 2051.452201. [See BBB]
9. Conflicts disclosure statements and questionnaires, under Local Government Code 176.009. [See BBFA, CFE]
10. Notice of a board meeting and, if the college district contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more, the agenda for a board meeting, under Government Code 551.056. [See BD]

11. Any written agenda and related supplemental written materials for a board meeting, as well as a broadcast of the board meeting followed by an archived version of that broadcast, if the junior college district has a total student enrollment of more than 20,000 in any semester of the preceding academic year, under Government Code 551.1282. [See BD]
12. During the 21 days before ~~the~~ **debt obligation** election, prominently and together with the notice of the election, the contents of the proposition, and any sample ballot prepared for the election, ~~a debt obligation election order,~~ under Election Code 4.003. [See CAD]
13. In a political subdivision with at least 250 registered voters, a voter information document, under Government Code 1251.052. [See CAD]
14. Prominently on the home page in the form prescribed by the comptroller, tax rate, estimated interest and fund balance, and debt obligation information, under Tax Code 26.04. [See CAI]
15. On the home page the prescribed statement if the college district proposes to increase the amount of taxes to fund maintenance and operation expenditures, under Tax Code 26.05. [See CAI]
16. Notice of a required public hearing on a tax rate increase, under Tax Code 26.06 and 26.065. [See CAI]
17. Information about the college district, including the board, the budget, and the tax rate, in a format prescribed by the comptroller, under Tax Code 26.18. [See CAI, BB, CC, CDC, and GC]
18. The current version of the guidelines and criteria governing tax abatement agreements, under Tax Code 312.002. [See CAIB]
19. If the website is generally accessible, a link to the state expenditure database, under Government Code 2054.126. [See CDA]
20. A copy of the college district's financial transactions, under Education Code 51.9741. [See CDA]
21. An annual debt obligation report or link to where the information is located and the contact information for the college district's main office, under Local Government Code 140.008. [See CDA]

22. The internal audit plan and annual report, under Government Code 2102.009. [See CDC]
23. If adopted, the college district's policy regarding the maintenance, storage, administration, and disposal of epinephrine auto-injectors on the institution's campus, under Education Code 51.882. [See CGE]
24. A college district shall report its energy usage information on a publicly accessible internet website with an interface designed for ease of navigation, if available, under Government Code 2265.001. [See CH]
25. In a prominent location, the code of conduct for the college district's officers, employees, and agents, under 20 U.S.C. 1094. [See DBD]
- ~~26.~~ Information regarding college district employees and employee compensation, under Government Code 659.026. [See DEA]
- ~~27.~~26. Information regarding a gift, grant, donation, or other consideration from a person that the person designated to be used as a salary supplement, and related conflict of interest provisions, under Government Code 659.0201. [See DEA]
- ~~28.~~27. The campus expression policies, under Education Code 51.9315. [See DGC, FLA, and GD]
- ~~29.~~28. Prominently displayed, the contact information required to be listed for the Title IX coordinator and the notice of nondiscrimination, under 34 C.F.R. 106.8(b)(2). [See DIAA and FFDA]
- ~~30.~~29. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, under 34 C.F.R. 106.45(b)(10). [See DIAA and FFDA]
- ~~31.~~30. On a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the homepage, the policy on sexual harassment, sexual assault, dating violence, and stalking, under Education Code 51.282(b) and 19 Administrative Code 3.4(b). [See DIAA and FFDA]
- ~~32.~~31. A report concerning the reports of sexual harassment, sexual assault, dating violence, or stalking received by the college district, under Education Code 51.253(c)–(d) and 19 Administrative Code 3.6(c)–(d). [See DIAA and FFDA]

- ~~33~~**32**. The end-of-course student evaluations of faculty according to a plan developed under Education Code 51.974(h) and 19 Administrative Code 4.227(10) and 4.228(e). [See DLA]
- ~~34~~**33**. The International Standard Book Number (ISBN) and retail price information of required and recommended college textbooks and supplemental materials for each course listed in the institution's course schedule used for preregistration and registration purposes, under 20 U.S.C. 1015b. [See EDA]
- ~~35~~**34**. Information about each undergraduate classroom course offered for credit not later than the seventh day after the first day of classes for the semester or other academic term during which the course is offered, under Education Code 51.974 and 19 Administrative Code 4.227 to 4.228. [See EFA]
- ~~36~~**35**. The recommended course sequences for each undergraduate certificate or degree program **not later than August 1 of each year**, under Education Code 51.96852- **and 19 Administrative Code 4.363(c)**. [See EFB]
- ~~37~~**36**. The college district's policy to grant undergraduate course credit to entering freshmen students who have successfully completed the International Baccalaureate Diploma Program, who have achieved required scores on one or more examinations in the Advanced Placement Program or the College-Level Examination Program, or who have successfully completed one or more courses offered through concurrent enrollment in high school and at an institution of higher education with the application materials, under Education Code 51.968. [See EGA]
- ~~38~~**37**. Guidelines addressing the practices of the college district regarding the transfer of course credit, under Education Code 61.830. [See EGA]
- ~~39~~**38**. A list of work-study employment opportunities accessible through a clearly identifiable link that appears in a prominent place on the financial aid page, under Education Code 56.080 and 19 Administrative Code 22.129(f). [See FEB]
- ~~40~~**39**. The name of and contact information for the college district's liaison officer for students who are or were in foster care and information regarding support services and other resources available to the students, under Education Code 51.9356. [See FF]
- ~~41~~**40**. The mental health resources available to students at the college district on a dedicated website, under Education Code 51.9193. [See FFCA]

~~42.41.~~ In a prominent location, a report on hazing committed on or off campus by an organization registered with or recognized by the college district, under Education Code 51.936. [See FLBC]

~~43.42.~~ The college district's contact information, under Government Code 2051.~~151 and 2051.152(a)~~**201** and Tax Code 26.18. [See GC]

Optional Internet Postings

A college district that maintains an internet website may broadcast an open meeting over the internet, under Government Code 551.128. [See BD]

Geospatial Data Products

"Geospatial data product" means a document, computer file, or internet website that contains geospatial data, a map, or information about a service involving geospatial data or a map. *Gov't Code 2051.101(1)*

Notice

A governmental entity, including a college district, shall include a notice as provided by Government Code Chapter 2051, Subchapter D on each geospatial data product that:

1. Is created or hosted by the governmental entity;
2. Appears to represent property boundaries; and
3. Was not produced using information from an on-the-ground survey conducted by or under the supervision of a registered professional land surveyor or land surveyor authorized to perform surveys under laws in effect when the survey was conducted.

The notice must be in substantially the following form: "This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries."

The notice may include language further defining the limits of liability of a geospatial data product producer; apply to a geospatial data product that contains more than one map; or for a notice that applies to a geospatial data product that is or is on an internet website, be included on a separate page that requires the person accessing the website to agree to the terms of the notice before accessing the geospatial data product.

Gov't Code 2051.102

Exemption

A governmental entity is not required to include the notice on a geospatial data product that:

1. Does not contain a legal description, a property boundary monument, or the distance and direction of a property line;
2. Is prepared only for use as evidence in a legal proceeding;
3. Is filed with the clerk of any court; or
4. Is filed with the county clerk.

Gov't Code 2051.103

Information Security Oversight

The head of each state institution of higher education, **including each college district**, is ultimately responsible for the security of state information resources. The head of each state institution of higher education or ~~his or her~~ **the official's** designated representative(s), shall:

1. Designate an Information Security Officer (ISO) who has the explicit authority and the duty to administer the information security requirements of ~~this chapter~~ **1 Administrative Code Chapter 202** institution wide;
2. Allocate resources for ongoing information security remediation, implementation, and compliance activities that reduce risk to a level acceptable to the institution head;
3. Ensure that senior institution of higher education officials and information-owners, in collaboration with the information resources manager and information security officer, support the provision of information security for the information systems that support the operations and assets under their direct or indirect (e.g., cloud computing or outsourced) control;
4. Ensure that the institution of higher education has trained personnel to assist the institution of higher education in complying with the requirements of ~~this chapter~~ **Chapter 202** and related policies;
5. Ensure that senior institution of higher education officials support the institution of higher education's ISO in developing, at least annually, a report on the institution of higher education's information security program, as specified in 1 Administrative Code 202.71(b)(11) and 202.73(a);
6. Approve high level risk management decisions as required by 1 Administrative Code 202.75(4);
7. Review and approve at least annually the institution of higher education's information security program required under 1 Administrative Code 202.74; and
8. Ensure that information security management processes are part of the institution of higher education's strategic planning and operational processes.

1 TAC 202.70

Information Security Officer

Each institution of higher education, **including each college district**, shall have a designated ISO and shall provide that its ISO reports to executive level management, has authority for information

security for the entire institution, possesses training and experience required to administer the functions described under 1 Administrative Code Chapter 202, and whenever possible, has information security duties as that official's primary duty.

The ISO shall be responsible for:

1. Developing and maintaining an institution-wide information security plan as required by Government Code 2054.133;
2. Developing and maintaining information security policies and procedures that address the requirements of this chapter and the institution's information security risks;
3. Working with the business and technical resources to ensure that controls are utilized to address all applicable requirements of this chapter and the institution's information security risks;
4. Providing for training and direction of personnel with significant responsibilities for information security with respect to such responsibilities;
5. Providing guidance and assistance to senior institution of higher education officials, information owners, information custodians, and end users concerning their responsibilities under 1 Administrative Code Chapter 202;
6. Ensuring that annual information security risk assessments are performed and documented by information-owners;
7. Reviewing the institution's inventory of information systems and related ownership and responsibilities;
8. Developing and recommending policies and establishing procedures and practices, in cooperation with the institution's Information Resources Manager (IRM), information-owners and custodians, necessary to ensure the security of information and information resources against unauthorized or accidental modification, destruction, or disclosure;
9. Coordinating the review of the data security requirements, specifications, and, if applicable, third-party risk assessment of any new computer applications or services that receive, maintain, and/or share confidential data;
10. Verifying that security requirements are identified and risk mitigation plans are developed and contractually agreed and obligated prior to the purchase of information technology hardware, software, and systems development services for any

new high impact computer applications or computer applications that receive, maintain, and/or share confidential data;

11. Reporting, at least annually, to the state institution of higher education head the status and effectiveness of security controls; and
12. Informing the parties in the event of noncompliance with this chapter and/or with the institution's information security policies.

The ISO, with the approval of the state institution of higher education head, may issue exceptions to information security requirements or controls in 1 Administrative Code Chapter 202. Any such exceptions shall be justified, documented, and communicated as part of the risk assessment process.

Gov't Code 2054.136; 1 TAC 202.71

Information Security Program

Each institution of higher education, **including each college district**, shall develop, document, and implement an institution of higher education-wide information security program, approved by the institution of higher education's head or delegate under 1 Administrative Code 202.70, that includes protections, based on risk, for all information and information resources owned, leased, or under the custodianship of any department, operating unit, or employee of the institution of higher education including outsourced resources to another institution of higher education, contractor, or other source (e.g., cloud computing). The program shall include:

1. Periodic assessments of the risk and impact that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the institution of higher education;
2. Policies, controls, standards, and procedures that:
 - a. Are based on the risk assessments required by 1 Administrative Code 202.75;
 - b. Cost-effectively reduce information security risks to a level acceptable to the institution head;
 - c. Ensure that information security is addressed throughout the life cycle of each institution of higher education information resource; and
 - d. Ensure compliance with the requirements of 1 Administrative Code Chapter 202, Subchapter C; minimally ac-

ceptable system configuration requirements, as determined by the institution of higher education; and the control catalog published by the Department of Information Resources (DIR).

3. Strategies to address risk to high-impact information resources;
4. Plans for providing information security for networks, facilities, and systems or groups of information systems, based on risk;
5. A process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the institution of higher education; and
6. A process to justify, grant, and document any exceptions to specific program requirements in accordance with requirements and processes defined in 1 Administrative Code Chapter 202.

State institutions of higher education are responsible for:

1. Defining all information classification categories except the confidential information category, which is defined in 1 Administrative Code Subchapter A, and establishing the controls for each;
2. Administering an ongoing information security awareness education program for all users; and
3. Introducing information security awareness and informing new employees of information security policies and procedures during the onboarding process.

Government Code 2054.133; 1 TAC 202.74

Staff Responsibilities

Information owners, custodians, and users of information resources shall, in consultation with the institution's IRM and ISO, be identified, and their responsibilities defined and documented by the state institution of higher education-, **including a college district**. The distinctions below among owner, custodian, and user responsibilities should guide determination of these roles. *1 TAC 202.72*

Information Owner

The owner or ~~his or her~~ **the owner's** designated representative(s) are responsible for:

1. Classifying information under their authority, with the concurrence of the state institution of higher education head or his or

her designated representative(s), in accordance with institution of higher education's established information classification categories.

2. Approving access to information resources and periodically reviewing access lists based on documented risk management decisions.
3. Formally assigning custody of information or an information resource.
4. Coordinating data security control requirements with the ISO.
5. Conveying data security control requirements to custodians.
6. Providing authority to custodians to implement security controls and procedures.
7. Justifying, documenting, and being accountable for exceptions to security controls. The information owner shall coordinate and obtain approval for exceptions to security controls with the institution of higher education information security officer.
8. Participating in risk assessments as provided under 1 Administrative Code 202.75.

1 TAC 202.72(1)

Information
Custodian

Custodians of information resources, including third-party entities providing outsourced information resources services to state institutions of higher education, shall:

1. Implement controls required to protect information and information resources required by ~~this chapter~~ **Administrative Code Chapter 202** based on the classification and risks specified by the information owner(s) or as specified by the policies, procedures, and standards defined by the institution of higher education information security program;
2. Provide owners with information to evaluate the cost-effectiveness of controls and monitoring;
3. Adhere to monitoring techniques and procedures, approved by the ISO, for detecting, reporting, and investigating incidents;
4. Provide information necessary to provide appropriate information security training to employees; and
5. Ensure information is recoverable in accordance with risk management decisions.

1 TAC 202.72(2)

User

The user of an information resource has the responsibility to:

1. Use the resource only for the purpose specified by the institution or information-owner;
2. Comply with information security controls and institutional policies to prevent unauthorized or accidental disclosure, modification, or destruction; and
3. Formally acknowledge that they will comply with the security policies and procedures in a method determined by the institution head or his or her designated representative.

Institution information resources designated for use by the public shall be configured to enforce security policies and procedures without requiring user participation or intervention. Information resources must require the acceptance of a banner or notice prior to use.

*1 TAC 202.72(3)–(4)***Security Controls**

Mandatory Controls

Mandatory security controls shall be defined by DIR in a Control Standards document published on DIR's website. The controls shall include minimum information security requirements for all state information and information systems and standards to be used by all institutions of higher education, **including all college districts**, to provide levels of information security according to risk levels.

A review of the institution's information security program for compliance with these standards will be performed at least biennially, based on business risk management decisions, by individual(s) independent of the information security program and designated by the institution of higher education head or ~~his or her~~ **the official's** designated representative(s).

1 TAC 202.76(a)–(c)

Optional Controls

The head of an institution of higher education may employ standards for the cost-effective information security of information and information resources within or under the supervision of that institution of higher education that are more stringent than the standards DIR prescribes if the more stringent standards:

1. Contain at least the applicable standards issued by the department; and

2. Are consistent with applicable federal law, policies, and guidelines issued under state rule, industry standards, best practices, or are deemed necessary to adequately protect the information held by the institution of higher education.

1 TAC 202.76(e)

Risk Management

A risk assessment of the institution's information and information systems shall be performed and documented. The inherent impact will be ranked, at a minimum, as either "High," "Moderate," or "Low."

The frequency of the future risk assessments will be documented. Risk assessment results, vulnerability reports, and similar information shall be documented and presented to the ISO or his or her designated representative(s).

Approval of the security risk acceptance, transference, or mitigation decisions shall be the responsibility of:

1. The ISO or his or her designee(s), in coordination with the information owner, for systems identified with Low or Moderate residual risk.
2. The state institution of higher education head for all systems identified with a residual High Risk.

Gov't Code 2054.515; 1 TAC 202.75

Reporting

To the Institution

The ISO shall report, at least annually, to the institution of higher education, **including a college district**, head on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of 1 Administrative Code Chapter 202 and:

1. Effectiveness of current information security program and status of key initiatives;
2. Residual risks identified by the institution of higher education risk management process; and
3. Institution of higher education information security requirements and requests.

1 TAC 202.73(a)

To DIR

*Urgent Incident
Report*

Each state institution of higher education shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be

promptly reported to immediate supervisors and the institution of higher education's ISO. Security incidents shall be promptly reported to DIR in the form and manner specified by DIR where the security incident is assessed to:

1. Propagate to other state systems;
2. Result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws; or
3. Involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in Business and Commerce Code 521.002(a)(2) and other applicable laws that may require public notification.

If the security incident is assessed to involve suspected criminal activity (e.g., violations of Penal Code Chapter 33 (Computer Crimes) or **Penal Code** Chapter 33A, ~~Penal Code~~ (Telecommunications Crimes)), the institution of higher education shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

Depending on the criticality of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams should continue to report information to the department as it is collected. DIR shall instruct state institutions of higher education as to the manner in which they shall report such information to DIR. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by DIR, unless otherwise directed by the institution of higher education. Institutions of higher education shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

1 TAC 202.73(b)(1)

Monthly Incident Report

Summary reports of security-related events shall be sent to DIR on a monthly basis no later than nine calendar days after the end of the month. Institutions of higher education shall submit summary security incident reports in the form and manner specified by DIR. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by DIR, unless otherwise directed by the institution of higher education. *1 TAC 202.73(b)(2)*

<i>Biennial Information Security Plan</i>	Each state institution of higher education shall submit to the department a biennial information security plan not later than June 1 of each even-numbered year, in accordance with Government Code 2054.133. Each information security plan is confidential and exempt from disclosure under Government Code Chapter 552. <i>Gov't Code 2054.133(c)–(d); 1 TAC 202.73(b)(3)</i>
Financial Information Security Program	A financial institution, as defined below, shall develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of any customer information at issue. Such safeguards shall include the elements set forth below at Elements and shall be reasonably designed to achieve the objectives set forth below at Objectives. <i>15 U.S.C. 6801(b); 16 C.F.R. 314.3(a)</i>
Objectives	The objectives are to: 1. Ensure the security and confidentiality of customer information; 2. Protect against any anticipated threats or hazards to the security or integrity of such information; and 3. Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer. <i>16 C.F.R. 314.3(b)</i>
Elements	To develop, implement, and maintain the information security program, the financial institution shall: 1. Designate an employee or employees to coordinate the program; 2. Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, such a risk assessment should include consideration of risks in each relevant area of the institution's operations, including: a. Employee training and management;

- b. Information systems, including network and software design, as well as information processing, storage, transmission and disposal; and
 - c. Detecting, preventing and responding to attacks, intrusions, or other systems failures.
- 3. Design and implement information safeguards to control the risks the institution identifies through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguard's key controls, systems, and procedures.
- 4. Oversee service providers by:
 - a. Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue; and
 - b. Requiring the institution's service providers by contract to implement and maintain such safeguards.
- 5. Evaluate and adjust the information security program in light of the results of testing and monitoring, any material changes to the institution's operations or business arrangements, or any other circumstances that the college district knows or has reason to know may have a material impact on the information security program.

16 C.F.R. 314.4

Definitions

*Customer
Information*

"Customer Information" means any record containing nonpublic personal information, as defined below, about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of the institution or its affiliates. *16 C.F.R. 314.2(b)*

*Financial
Institution*

"Financial institution" means any institution the business of which is engaging in financial activities as described in the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k), including lending, exchanging, transferring, investing for others, or safeguarding money or securities. An institution that is significantly engaged in financial activities is a financial institution. *12 U.S.C. 1843(k); 16 C.F.R. 313.3(k)*

*Nonpublic
Personal
Information*

"Nonpublic personal information" means:

- 1. Personally identifiable financial information; and

2. Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

16 C.F.R. 313.3(n)

<i>Service Provider</i>	"Service provider" means any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provisions of services directly to a qualifying entity. 16 C.F.R. 314.2(d)
Cybersecurity Information Sharing Act	A non-federal entity, including a college district, may, for a cybersecurity purpose and consistent with the protection of classified information, share with, or receive from, any other non-federal entity or the federal government a cyber threat indicator or defensive measure. A non-federal entity receiving a cyber threat indicator or defensive measure from another non-federal entity or a federal entity shall comply with otherwise lawful restrictions placed on the sharing or use of such cyber threat indicator or defensive measure by the sharing non-federal or federal entity. 6 U.S.C. 1503(c)
Protection and Use of Information <i>Security</i>	A non-federal entity monitoring an information system, operating a defensive measure, or providing or receiving a cyber threat indicator or defensive measure under 6 U.S.C. 1503 shall implement and utilize a security control to protect against unauthorized access to or acquisition of such indicator or measure. 6 U.S.C. 1503(d)(1)
<i>Removal of Personal Information</i>	A non-federal entity sharing a cyber threat indicator pursuant to 6 U.S.C. Chapter 6, Subchapter I shall, prior to sharing: 1. Review such cyber threat indicator to assess whether such cyber threat indicator contains any information not directly related to a cybersecurity threat that the non-federal entity knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual and remove such information; or 2. Implement and utilize a technical capability configured to remove any information not directly related to a cybersecurity threat that the non-federal entity knows at the time of sharing to be personal information of a specific individual or information that identifies a specific individual. 6 U.S.C. 1503(d)(2)
<i>Use of Information</i>	A cyber threat indicator or defensive measure shared or received may, for cybersecurity purposes:

1. Be used by a non-federal entity to monitor or operate a defensive measure that is applied to an information system of the non-federal entity, or an information system of another non-federal entity or a federal entity upon written consent of that other non-federal entity or federal entity; and
2. Be otherwise used, retained, and further shared by a non-federal entity subject to an otherwise lawful restriction placed by the sharing non-federal entity or federal entity on such cyber threat indicator or defensive measure, or an otherwise applicable provision of law.

6 U.S.C. 1503(d)(3)

Exception

A cyber threat indicator or defensive measure shared with a state, tribal, or local government under 6 U.S.C. Chapter 6, Subchapter I shall not be used by any state, tribal, or local government to regulate, including an enforcement action, the lawful activity of any non-federal entity or any activity taken by a non-federal entity pursuant to mandatory standards, including an activity relating to monitoring, operating a defensive measure, or sharing of a cyber threat indicator. A cyber threat indicator or defensive measure shared as described in this provision may, consistent with a state, tribal, or local government regulatory authority specifically relating to the prevention or mitigation of cybersecurity threats to information systems, inform the development or implementation of a regulation relating to such information systems. *6 U.S.C. 1503(d)(4)(C)*

Law Enforcement Use

A college district that receives a cyber threat indicator or defensive measure under 6 U.S.C. Chapter 6, Subchapter I, may use such indicator or measure for the purposes described in 6 U.S.C. 1504(d)(5)(A). [See CKE] *6 U.S.C. 1503(d)(4)(A)*

Exemption from Public Disclosure

A cyber threat indicator or defensive measure shared by or with a state, tribal, or local government, including a component of a state, tribal, or local government that is a private entity, under 6 U.S.C. 1503 shall be deemed voluntarily shared information and exempt from disclosure under any provision of state, tribal, or local freedom of information law, open government law, open meetings law, open records law, sunshine law, or similar law requiring disclosure of information or records. *6 U.S.C. 1503(d)(4)(B)*

A cyber threat indicator or defensive measure shared with the federal government under 6 U.S.C. Chapter 6, Subchapter I, shall be:

1. Deemed voluntarily shared information and exempt from disclosure under 5 U.S.C. 552 and any state, tribal, or local provision of law requiring disclosure of information or records; and

2. Withheld, without discretion, from the public under 5 U.S.C. 552(b)(3)(B) and any state, tribal, or local provision of law requiring disclosure of information or records.

6 U.S.C. 1504(d)(3) [See GCA]

No Duty	Nothing in this section shall be construed to create a duty to share a cyber threat indicator or defensive measure or a duty to warn or act based on the receipt of a cyber threat indicator or defensive measure; or to undermine or limit the availability of otherwise applicable common law or statutory defenses. 6 U.S.C. 1505(c)
Definitions	
<i>Non-Federal Entity</i>	“Non-federal entity” means any private entity, non-federal government agency or department, or state, tribal, or local government (including a political subdivision, department, or component thereof). 6 U.S.C. 1501(14)
<i>Cybersecurity Purpose</i>	“Cybersecurity purpose” means the purpose of protecting an information system or information that is stored on, processed by, or transiting an information system from a cybersecurity threat or security vulnerability. 6 U.S.C. 1501(4)
<i>Cybersecurity Threat</i>	“Cybersecurity threat” means an action, not protected by the First Amendment to the U.S. Constitution, on or through an information system that may result in an unauthorized effort to adversely impact the security, availability, confidentiality, or integrity of an information system or information that is stored on, processed by, or transiting an information system. The term does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement. 6 U.S.C. 1501(5)
<i>Cyber Threat Indicator</i>	“Cyber threat indicator” means information that is necessary to describe or identify: 1. Malicious reconnaissance, as defined in 6 U.S.C. 1501(12), including anomalous patterns of communications that appear to be transmitted for the purpose of gathering technical information related to a cybersecurity threat or security vulnerability; 2. A method of defeating a security control or exploitation of a security vulnerability; 3. A security vulnerability, including anomalous activity that appears to indicate the existence of a security vulnerability; 4. A method of causing a user with legitimate access to an information system or information that is stored on, processed by, or transiting an information system to unwittingly enable the defeat of a security control or exploitation of a security vulnerability;

5. Malicious cyber command and control, as defined in 6 U.S.C. 1501(11);
6. The actual or potential harm caused by an incident, including a description of the information exfiltrated as a result of a particular cybersecurity threat;
7. Any other attribute of a cybersecurity threat, if disclosure of such attribute is not otherwise prohibited by law; or
8. Any combination thereof.

6 U.S.C. 1501(6)***Defensive Measure***

“Defensive measure” means an action, device, procedure, signature, technique, or other measure applied to an information system or information that is stored on, processed by, or transiting an information system that detects, prevents, or mitigates a known or suspected cybersecurity threat or security vulnerability. The term does not include a measure that destroys, renders unusable, provides unauthorized access to, or substantially harms an information system or information stored on, processed by, or transiting such information system not owned by the private entity operating the measure or another entity or federal entity that is authorized to provide consent and has provided consent to that private entity for operation of such measure. *6 U.S.C. 1501(7)*

Information System

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information; and includes industrial control systems, such as supervisory control and data acquisition systems, distributed control systems, and programmable logic controllers. *6 U.S.C. 1501(9); 44 U.S.C. 3502*

Security Control

“Security control” means the management, operational, and technical controls used to protect against an unauthorized effort to adversely affect the confidentiality, integrity, and availability of an information system or its information. *6 U.S.C. 1501(16)*

Security Vulnerability

“Security vulnerability” means any attribute of hardware, software, process, or procedure that could enable or facilitate the defeat of a security control. *6 U.S.C. 1501(17)*

Security Breach Notification

To Residents of
Texas and Certain
Other States

A person, including a college district, who conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose, in accordance with the notice provisions at Business and Commerce Code 521.053(e), any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by

an unauthorized person. The disclosure shall be made without unreasonable delay and in each case not later than the 60th day after the date on which the person determines that the breach occurred, except as provided at Criminal Investigation Exception, below, or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system. *Business and Commerce Code 521.053(b)*

If the individual whose sensitive personal information was or is reasonably believed to have been acquired by an unauthorized person is a resident of a state that requires a person described by Business and Commerce Code 521.053(b) to provide notice of a breach of system security, the notice of the breach of system security required by Section 521.053(b) may be provided under that state's law or under Business and Commerce Code 521.053(b). *Business and Commerce Code 521.053(b-1); Local Gov't Code 205.010*

To the Owner or
License Holder

A person who maintains computerized data that includes sensitive personal information not owned by the person shall notify the owner or license holder, in accordance with Business and Commerce Code 521.053(e), of the information of any breach of system security immediately after discovering the breach, if the sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. *Business and Commerce Code 521.053(c); Local Gov't Code 205.010*

To the Attorney
General

A person who is required to disclose or provide notification of a breach of system security under Business and Commerce Code 521.053 shall notify the attorney general, in accordance with Business and Commerce Code 521.053(i), of that breach not later than the 60th day after the date on which the person determines that the breach occurred if the breach involves at least 250 residents of this state. *Business and Commerce Code 521.053(i)*

To a Consumer
Reporting Agency

If a person is required to notify at one time more than 10,000 persons of a breach of system security, the person shall also notify each consumer reporting agency, as defined by 15 U.S.C. 1681a, that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices. The person shall provide the notice without unreasonable delay. *Business and Commerce Code 521.053(h); Local Gov't Code 205.010*

Criminal
Investigation
Exception

A person may delay providing the required notice to state residents or the owner or license holder at the request of a law enforcement agency that determines that the notification will impede a criminal investigation. The notification shall be made as soon as the law en-

forcement agency determines that the notification will not compromise the investigation. *Business and Commerce Code 521.053(d); Local Gov't Code 205.010*

Information Security
Policy

A person who maintains the person's own notification procedures as part of an information security policy for the treatment of sensitive personal information that complies with the timing requirements for notice under Business and Commerce Code 521.053 if the person notifies affected persons in accordance with that policy. *Business and Commerce Code 521.053(g); Local Gov't Code 205.010*

Definitions

*Breach of System
Security*

"Breach of system security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the person for the purposes of the person is not a breach of system security unless the person uses or discloses the sensitive personal information in an unauthorized manner. *Business and Commerce Code 521.053(a)*

*Sensitive
Personal
Information*

"Sensitive personal information" means:

1. An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
 - a. Social security number;
 - b. Driver's license number or government-issued identification number; or
 - c. Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or
2. Information that identifies an individual and relates to:
 - a. The physical or mental health or condition of the individual;
 - b. The provision of health care to the individual; or
 - c. Payment for the provision of health care to the individual.

"Sensitive personal information" does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

Business and Commerce Code 521.002(a)(2), (b)

Note: For cybersecurity training, see BBD and DK. **For vendor contracting requirements related to information security, see CF.**

Note: For complaints of discrimination, harassment, and retaliation targeting employees on the basis of a protected characteristic, see DIAA(LEGAL) and DIAB(LEGAL).

**Title VII—
Discrimination on
the Basis of Sex,
Race, Color,
Religion, or National
Origin**

Generally

No governmental entity, including a college district, shall deny to any person within its jurisdiction the equal protection of the laws. *U.S. Const. Amend. XIV*

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to ~~his~~the individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin or to limit, segregate, or classify ~~his~~the individual's employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect ~~his~~the individual's status as an employee, because of such individual's race, color, religion, sex, or national origin. *42 U.S.C. 2000e-2(a)*

Terminating an employee on the basis of the employee's homosexuality or transgender status violates Title VII's prohibition against sex discrimination in employment. *Bostock v. Clayton County, Georgia, 140 S. Ct. 1731 (2020)*

Title VII proscribes not only overt discrimination (disparate treatment) but also employment practices that are fair in form but discriminatory in operation (disparate impact). *Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)*

*Disparate
Treatment*

Disparate treatment occurs where members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. *29 C.F.R. 1607.11*

Disparate Impact

An unlawful employment practice based on disparate impact is established only if a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that the challenged practice is job-related and consistent with business necessity. *42 U.S.C. 2000e-2(k)(1)(A)*

Training

It shall be an unlawful employment practice for any employer controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual be-

EMPLOYMENT OBJECTIVES
EQUAL EMPLOYMENT OPPORTUNITY

DAA
(LEGAL)

	cause of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training. <i>42 U.S.C. 2000e-2(d)</i>
Job Qualification	It shall not be an unlawful employment practice for an employer to hire and employ an employee on the basis of his religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification. <i>42 U.S.C. 2000e-2(e)</i>
Employment Postings	It shall be an unlawful employment practice for an employer controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification. <i>42 U.S.C. 2000e-3(b)</i>
Additional Considerations	An employer, including a college district, may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. <i>Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)</i>
Sex Discrimination	
Gender Stereotypes	
Pregnancy	The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in 29 U.S.C. 2000e-2(h) shall be interpreted to permit otherwise. <i>42 U.S.C. 2000e(k)</i>
Equal Pay	No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less

than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, or responsibility, and which are performed under similar working conditions, except where such payment is pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. 29 U.S.C. 206(d); 34 C.F.R. 106.54

*Religious
Discrimination*

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

Note: See State Law, below, for state prohibitions on discrimination based on race, color, religion, sex, or national origin.

**Title VII—
Harassment of
Employees on the
Basis of Sex, Race,
Color, Religion, and
National Origin**

Harassment violates Title VII if it is sufficiently severe and pervasive to alter the conditions of employment. Pennsylvania State Police v. Suders, 542 U.S. 129 (2004)

Harassment on the basis of sex is a violation of Title VII, 42 U.S.C. 2000e-2.

The Equal Employment Opportunity Commission (EEOC) has consistently held that harassment on the basis of national origin is a violation of Title VII. An employer has an affirmative duty to maintain a working environment free of harassment on the basis of national origin.

42 U.S.C. 2000e-2; 29 C.F.R. 1606.8(a), 1604.11(a)

Title VII does not prohibit all verbal and physical harassment in the workplace. For example, harassment between men and women is not automatically unlawful sexual harassment merely because the words used have sexual content or connotations. Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)

Hostile Environment

Verbal or physical conduct based on a person's sex, race, color, religion, or national origin constitutes unlawful harassment when the conduct:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
3. Otherwise adversely affects an individual's employment opportunities.

Pennsylvania State Police v. Suders, 542 U.S. 129 (2004); *Nat'l Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986); 29 C.F.R. 1604.11, 1606.8

Quid Pro Quo

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

29 C.F.R. 1604.11(a)

Same-Sex Sexual Harassment

Same-sex sexual harassment constitutes sexual harassment. *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998)

Sexual Harassment Policy

An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned. 29 C.F.R. 1604.11(f)

Corrective Action

With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment or harassment in the workplace on the basis of national origin in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace or harassment of employees in the workplace on the basis of national origin, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the EEOC will consider the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of such non-employees.

29 C.F.R. 1604.11(d)–(e), 1606.8(d)–(e)

When no tangible employment action is taken, an employer may raise the following affirmative defense:

1. That the employer exercised reasonable care to prevent and promptly correct any harassing behavior; and
2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998)

Note: For related information regarding Title IX and the Clery Act see FA(LEGAL).

**ADEA—Age
Discrimination**

It shall be unlawful for an employer:

1. To fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's age;
2. To limit, segregate, or classify his employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's age; or
3. To reduce the wage rate of any employee in order to comply with 29 U.S.C. Chapter 14.

29 U.S.C. 623(a)

It shall not be unlawful for an employer:

1. To take any action otherwise prohibited under 29 U.S.C. 623(a) where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;
2. To take any action otherwise prohibited under 29 U.S.C. 623(a):
 - a. To observe the terms of a bona fide seniority system that is not intended to evade the purposes of 29 U.S.C.

Chapter 14, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by 29 U.S.C. 631(a) because of the age of such individual; or

- b. To observe the terms of a bona fide employee benefit plan in compliance with 29 U.S.C. 623. No such employee benefit plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by 29 U.S.C. 631(a) because of the age of such individual.
3. To discharge or otherwise discipline an individual for good cause.

29 U.S.C. 623(f)

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment because such individual has opposed any practice made unlawful by this section, or because such individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under 29 U.S.C. Chapter 14. *29 U.S.C. 623(d)*

Note: See State Law, below, for state prohibitions on discrimination based on age.

**ADA and Section 504
—Disability
Discrimination**

No covered entity, including a college district, shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. *42 U.S.C. 12112(a); 29 C.F.R. 1630.4(b)*

Discrimination
Based on Lack of
Disability

Nothing in the Americans with Disabilities Act (ADA), 42 U.S.C. Chapter 126, shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability. *42 U.S.C. 12201(g); 29 C.F.R. 1630.4(b)*

Definition of
Disability

“Disability” means, with respect to an individual:

1. A physical or mental impairment that substantially limits one or more major life activities of an individual;
2. A record of having such an impairment; or
3. Being regarded as having such an impairment.

	An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. <i>42 U.S.C. 12102(1), (4)(C)–(D); 29 C.F.R. 1630.2(g), (j)(1), .3</i>
<i>Regarded as Having Such an Impairment</i>	An individual meets the requirement of being “regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. <i>42 U.S.C. 12102(3)(A); 29 C.F.R. 1630.2(g), (l)</i>
Transitory and Minor	Item 3 in the definition of “disability,” above, (“regarded as having such an impairment”) shall not apply to impairments that are transitory or minor. A transitory impairment is an impairment with an actual or expected duration of six months or less. <i>42 U.S.C. 12102(3)(B); 29 C.F.R. 1630.2(j)(1)(ix)</i>
<i>Mitigating Measures</i>	The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy or supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. The ameliorative effects of mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. “Ordinary eyeglasses and contact lenses” are lenses that are intended to fully correct visual acuity or to eliminate refractive error. “Low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image. <i>42 U.S.C. 12102(4)(E)</i>
Other Definitions	“Major life activities” include, but are not limited to:
<i>Major Life Activities</i>	1. Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and

2. The operation of a major bodily function, including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within the body system.

42 U.S.C. 12102(2); 29 C.F.R. 1630.2(i)

*Physical or
Mental
Impairment*

“Physical or mental impairment” means:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
2. Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 C.F.R. 1630.2(h)

*Qualified
Individual*

“Qualified” with respect to an individual with a disability, means that the individual:

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

42 U.S.C. 12111(8); 29 C.F.R. 1630.2(m)

*Reasonable
Accommodation*

A covered entity is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the “actual disability” prong or “record of disability” prong, but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the “regarded as” prong. [See DBB regarding medical examinations and inquiries under the Americans

with Disabilities Act] 29 U.S.C. 794, 42 U.S.C. 12112(b)(5);
29 C.F.R. 1630.2(o)(4), .9, 34 C.F.R. 104.11

“Reasonable accommodation” may include:

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

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

Undue Hardship

“Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include the nature and cost of the accommodation needed, the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the overall financial resources of the covered entity, the type of operation or operations of the covered entity, and other factors set out in 42 U.S.C. 12111(10). 42 U.S.C. 12111(10); 29 C.F.R. 1630.2(p); 34 C.F.R. 104.12(c)

Discrimination
Based on
Relationship

It is unlawful for a covered entity to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association. 42 U.S.C. 12112(b)(4); 29 C.F.R. 1630.8

Illegal Drugs and
Alcohol

A qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use. 42 U.S.C. 12114(a); 29 C.F.R. 1630.3(a)

Drug Testing

Nothing in 42 U.S.C. Chapter 126, Subchapter I shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on the results of such tests. [See DHB] 42 U.S.C. 12114(d)(2); 29 C.F.R. 1630.3(c), .16(c)

Alcohol Use

The term “individual with a disability” does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse,

	would constitute a direct threat to property or the safety of others. 29 U.S.C. 705(20)(C)(v); 42 U.S.C. 12114(a); 29 C.F.R. 1630.16(b)
Qualification Standards	It is unlawful for a covered entity to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity. 29 C.F.R. 1630.10(a)
<i>Direct Threat to Health or Safety</i>	The term “qualification standards” may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace. “Direct threat” means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. The determination that an individual poses a “direct threat” shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm. 42 U.S.C. 12111(3), 12113(b); 29 C.F.R. 1630.2(r)
<i>Vision Standards and Tests</i>	A covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity. 42 U.S.C. 12113(c); 29 C.F.R. 1630.10(b)
<i>Communicable Diseases</i>	In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the U.S. Secretary of Health and Human Services under 42 U.S.C. 12113(e)(1), and that cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign an individual to a job involving food handling. 42 U.S.C. 12113(e)(2); 29 U.S.C. 705(20)(D); 29 C.F.R. 1630.16(e)
Service Animals	A covered entity that is subject to the jurisdiction of Title I of the ADA (employment discrimination) or to section 504 of the Rehabilitation Act (employment discrimination), shall comply with the reasonable accommodation requirements of those laws with respect to service animals. [See Reasonable Accommodations, above]

A covered entity that is not subject to either Title I or section 504 shall comply with Title II of the ADA (discrimination by public entity). An employer that is subject to Title II shall comply with 28 C.F.R. part 35, including the requirements relating to service animals at 28 C.F.R. 35.136 [see FAA].

28 C.F.R. 35.140

Note: See State Law, below, for state prohibitions on discrimination based on disability.

Military Service

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of that membership, application for membership, performance of service, application for service, or obligation.

An employer, including a college district, may not discriminate in employment against or take any adverse employment action against any person because such person has taken action to enforce protections afforded any person under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. Chapter 43, has testified or otherwise made a statement in or in connection with any proceeding under USERRA, has assisted or otherwise participated in an investigation under USERRA, or has exercised a right provided for in USERRA.

38 U.S.C. 4311 [See DECB]

Bankruptcy

A governmental unit, including a college district, may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under U.S.C. Title 11 or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under Title 11 or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under Title 11, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under Title 11 or that was discharged under the Bankruptcy Act. *11 U.S.C. 525(a)*

Retaliation

An employer, including a college district, may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. 29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 34 C.F.R. 100.7(e) (Title VI); 34 C.F.R. 110.34 (Age Act); 42 U.S.C. 12203 (ADA); Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005) (Title IX)

Note: See State Law, below, for state prohibitions on retaliation.

State Law

Unlawful Employment Practice

An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

An employer commits an unlawful employment practice if it aids, abets, incites, or coerces a person to engage in an unlawful discriminatory practice based on race, color, disability, religion, sex, national origin, or age.

Labor Code 21.051; 40 TAC 819.12(a), (f)

Disparate Impact

An unlawful employment practice based on disparate impact is established under Labor Code Chapter 21 only if a complainant demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, sex, national origin, religion, or disability and the respondent fails to demonstrate that the challenged practice is job-related for the position in question and consistent with business necessity; or the complainant makes the demonstration in accordance with federal law as that law existed June 4, 1989, with respect to the concept of alternative employment practices, and the respondent refuses to adopt such an alternative employment practice. To demonstrate that a particular employment practice causes a disparate impact, the complainant must demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complainant demonstrates to the satisfaction of the court that the elements of a respondent's decision-making process are not capable of separation for analysis, that decision-making process may

	be analyzed as one employment practice. <i>Labor Code 21.122(a), (c)</i>
<i>Exception</i>	An employer does not commit an unlawful employment practice by engaging in a practice that has a discriminatory effect and that would otherwise be prohibited by Chapter 21 if the employer establishes that the practice is not intentionally devised or operated to contravene the prohibitions of Chapter 21; and is justified by business necessity. <i>Labor Code 21.115(a)</i>
Job Training Programs	Unless a training or retraining opportunity or program is provided under an affirmative action plan approved under a federal law, rule, or order, an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, or committee discriminates against an individual because of race, color, disability, religion, sex, national origin, or age in admission to or participation in the program. <i>Labor Code 21.054</i>
Selection Criterion	An employer may not use a qualification standard, employment test, or other selection criterion based on an individual's uncorrected vision unless the standard, test, or criterion is consistent with business necessity and job-related for the position to which the standard, test, or criterion applies. <i>Labor Code 21.115(b)</i>
<i>Bona Fide Occupational Qualification</i>	If disability, religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise, performing any of the following practices on the basis of disability, religion, sex, national origin, or age of an employee, member, or other individual is not an unlawful employment practice: 1. An employer hiring and employing an employee; 2. An employment agency classifying or referring an individual for employment; or 3. An employer controlling an apprenticeship, on-the-job training, or other training or retraining program admitting or employing an individual in its program. <i>Labor Code 21.119</i>
Job Advertisement	An employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, employment agency, or committee prints or publishes or causes to be

printed or published a notice or advertisement relating to employment that:

1. Indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and
2. Concerns an employee's status, employment, or admission to or membership or participation in a labor union or training or retraining program.

~~This section~~ **Labor Code 21.059** does not apply if disability, religion, sex, national origin, or age is a bona fide occupational qualification.

Labor Code 21.059; 40 TAC 819.12(i)

Bona Fide
Employee Benefit
Plan

An employer does not commit an unlawful employment practice by applying different standards of compensation or different terms, conditions, or privileges of employment under a bona fide seniority system, merit system, or an employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade Labor Code Chapter 21; or a system that measures earnings by quantity or quality of production. *Labor Code 21.102(a)*

Exception

An employee benefit plan may not excuse a failure to hire on the basis of age. A seniority system or employee benefit plan may not require or permit involuntary retirement on the basis of age except as permitted by Labor Code 21.103.

This section does not apply to standards of compensation or terms, conditions, or privileges of employment that are discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

Labor Code 21.102(b)–(c)

Additional
Considerations

**Sexual
Harassment**

"Employer" means a person who employs one or more employees or acts directly in the interests of an employer in relation to an employee.

"Sexual harassment" means an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:

1. **Submission to the advance, request, or conduct is made a term or condition of an individual's employment, either explicitly or implicitly;**

2. Submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's employment;
3. The advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or
4. The advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

An employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's agents or supervisors:

1. Know or should have known that the conduct constituting sexual harassment was occurring; and
2. Fail to take immediate and appropriate corrective action.

Labor Code 21.141–.142

***Pregnancy
Discrimination***

A provision in Labor Code Chapter 21 referring to discrimination because of sex or on the basis of sex includes discrimination because of or on the basis of pregnancy, childbirth, or a related medical condition. A woman affected by pregnancy, childbirth, or a related medical condition shall be treated for all purposes related to employment, including receipt of a benefit under a fringe benefit program, in the same manner as another individual not affected but similar in the individual's ability or inability to work. *Labor Code 21.106*

***Religious
Discrimination***

A provision in Chapter 21 referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business. *Labor Code 21.108*

A government agency, including a college district, may not substantially burden a person's free exercise of religion. The prohibition does not apply if the government agency demonstrates that the application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. *Civ. Prac. and Rem. Code 110.003(a)–(b)*

*Association with
a Religious
Organization*

Notwithstanding any other law, a governmental entity, including a college district, may not take any adverse action against any person, as defined by Government Code 2400.001(4), based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

"Adverse action" means any action taken by a governmental entity to:

1. Withhold, reduce, exclude, terminate, or otherwise deny any grant, contract, subcontract, cooperative agreement, loan, scholarship, license, registration, accreditation, employment, or other similar status from or to a person;
2. Withhold, reduce, exclude, terminate, or otherwise deny any benefit provided under a benefit program from or to a person;
3. Alter in any way the tax treatment of, cause any tax, penalty, or payment assessment against, or deny, delay, or revoke a tax exemption of a person;
4. Disallow a tax deduction for any charitable contribution made to or by a person;
5. Deny admission to, equal treatment in, or eligibility for a degree from an educational program or institution to a person; or
6. Withhold, reduce, exclude, terminate, or otherwise deny access to a property, educational institution, speech forum, or charitable fundraising campaign from or to a person.

Gov't Code 2400.001(1), .002 [See GA]

*Access for
Religious
Organizations
During
Disasters*

A governmental entity may not:

1. **At any time, including during a declared state of disaster, prohibit a religious organization from engaging in religious and other related activities or continuing to operate in the discharge of the organization's foundational faith-based mission and purpose; or**
2. **During a declared state of disaster order a religious organization to close or otherwise alter the organization's purposes or activities.**

Gov't Code 2401.002(b) [See GA]

*Age
Discrimination*

The provisions of Labor Code Chapter 21 referring to discrimination because of age or on the basis of age apply only to discrimination against an individual 40 years of age or older. *Labor Code 21.101*

<i>Discrimination Based on Lack of Disability</i>	Nothing in this chapter may be construed as the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of a disability. <i>Labor Code 21.005(c)</i>
<i>Reasonable Accommodation</i>	It is an unlawful employment practice for a respondent covered under this chapter to fail or refuse to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability who is an employee or applicant for employment, unless the respondent demonstrates that the accommodation would impose an undue hardship on the operation of the business of the respondent. A showing of undue hardship by the respondent is a defense to a complaint of discrimination made by an otherwise qualified individual with a disability. <i>Labor Code 21.128(a)–(b)</i>
Official Oppression	A public servant acting under color of ~~his~~the public servant's office or employment commits an offense if ~~he~~the public servant intentionally subjects another to sexual harassment. "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly. An offense under this section is a Class A misdemeanor. <i>Penal Code 39.03(a), (c)–(d)</i>
Sexual Harassment of Unpaid Interns	An employer commits an unlawful employment practice if sexual harassment of an unpaid intern occurs and the employer or the employer's agents or supervisors: 1. Know or should have known that the conduct constituting sexual harassment was occurring; and 2. Fail to take immediate and appropriate corrective action. An individual is considered to be an unpaid intern of an employer if: 1. The individual's internship, even though it includes engagement in the employer's operations or the performance of productive work for the employer, is similar to training that would be given in an educational environment; 2. The individual's internship experience is for the individual's benefit; 3. The individual does not displace the employer's regular employees but works under close supervision of the employer's existing staff;

4. The employer does not derive any immediate advantage from the individual's internship activities and on occasion the employer's operations may be impeded by those activities;
5. The individual is not entitled to a job at the conclusion of the internship; and
6. The individual is not entitled to wages for the time spent in the internship.

"Sexual harassment" means an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:

1. Submission to the advance, request, or conduct is made a term or condition of an individual's internship, either explicitly or implicitly;
2. Submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's internship;
3. The advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance at the individual's internship; or
4. The advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

Labor Code 21.1065

Retaliation

An employer commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person who, under Labor Code Chapter 21 opposes a discriminatory practice; makes or files a charge; files a complaint; or testifies, assists, or participates in any manner in an investigation, proceeding, or hearing. *Labor Code 21.055; 40 TAC 819.12(e)*

Notices

Title VII

Every employer, including each college district, shall post and keep posted in conspicuous places upon its premises, where notices to employees, applicants for employment, and members are customarily posted, a notice to be prepared or approved by the Equal Employment Opportunity Commission (EEOC) setting forth excerpts from or, summaries of, the pertinent provisions of ~~this subchapter~~ **42 U.S.C. Chapter 21, Subchapter VI** and information pertinent to the filing of a complaint. *42 U.S.C. 2000e-10*

ADEA

Every employer shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the

EEOC setting forth information as the EEOC deems appropriate to effectuate the purposes of the ADEA. 29 U.S.C. 627

Section 504 Notice

A recipient of federal funds that employs 15 or more persons shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability in violation of Section 504 of the Rehabilitation Act or 34 C.F.R. Part 104.

The notification shall state, where appropriate, that the recipient does not discriminate in employment in its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to 34 C.F.R. 104.7(a) (Section 504 coordinator).

Methods of initial and continuing notification may include:

1. Posting of notices;
2. Publication in newspapers and magazines;
3. Placement of notices in recipients' publications; and
4. Distribution of memoranda or other written communications.

If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to applicants or employees, it shall include in those materials or publications a statement of its nondiscrimination policy.

34 C.F.R. 104.8

**Former Board
Member Employment**

A public junior college may not employ or contract with an individual who was a member of the board of the junior college before the first anniversary of the date the individual ceased to be a member of the board of trustees. *Education Code 130.089*

**Employee
Information**

A person or entity, including a college district, that hires or recruits an individual for employment must ensure that the individual properly:

1. Completes section 1—"Employee Information and Verification"—on the Form I-9 at the time of hire and signs the attestation with a handwritten or electronic signature in accordance with 8 C.F.R. 274a.2(h), or if an individual is unable to complete the Form I-9 or needs it translated, someone may assist him or her in accordance with 8 C.F.R. 274a.2(b); and
2. Present to the employer or the recruiter or referrer for a fee documentation as set forth in 8 C.F.R. 274a.2(b)(1)(v) establishing ~~his or her~~ **the individual's** identity and employment authorization within the time limits set forth in 8 C.F.R. 274a.2(b)(1)(ii) through (b)(1)(v).

8 C.F.R. 274a.2(b)(1)(i)

**Verification of
Employment
Eligibility**

An employer, ~~his or her~~ **the employer's** agent, or anyone acting directly or indirectly in the interest thereof, must within three business days of the hire:

New Hire

1. Physically examine the documentation presented by the individual establishing identity and employment authorization as set forth in 8 C.F.R. 274a.2(b)(1)(v) and ensure that the documents presented appear to be genuine and to relate to the individual; and
2. Complete section 2 – "Employer Review and Verification" – on the Form I-9 within three business days of the hire and sign the attestation with a handwritten signature or electronic signature in accordance with 8 C.F.R. 274a.2(i).

8 C.F.R. 274a.2(b)(1)(ii)

An employer will not be deemed to have hired an individual for employment if the individual is continuing in ~~his or her~~ **the individual's** employment and has a reasonable expectation of employment at all times as described by 8 C.F.R. 274a.2(b)(1)(viii). *8 C.F.R. 274a.2(b)(1)(viii)*

Exception

An employer who hires an individual for employment for a duration of less than three business days must comply with 8 C.F.R.

274a.2(b)(1)(ii)(A) and (b)(1)(ii)(B) at the time of the hire. An employer may not accept a receipt, as described in 8 C.F.R.

274a.2(b)(1)(vi), in lieu of the required document if the employment is for less than three business days. *8 C.F.R. 274a.2(b)(1)(iii)*

Rehire

When an employer hires an individual whom that person or entity has previously employed, if the employer has previously completed the Form I-9 and complied with the verification requirements set forth in 8 C.F.R. 274a.2(b) with regard to the individual, the employer may (in lieu of completing a new Form I-9) inspect the previously completed Form I-9 and, if upon inspection of the Form I-9, the employer determines that the Form I-9 relates to the individual and that the individual is still eligible to work, that previously executed Form I-9 is sufficient if the individual is hired within three years of the date of the initial execution of the Form I-9 and the employer updates the Form I-9 to reflect the date of rehire. *8 C.F.R. 274a.2(c)*

Existing Employee

If an individual's employment authorization expires, the employer, recruiter, or referrer for a fee must reverify on the Form I-9 to reflect that the individual is still authorized to work in the United States; otherwise, the individual may no longer be employed, recruited, or referred. Reverification on the Form I-9 must occur not later than the date work authorization expires. If an Employment Authorization Document (Form I-766) was presented for completion of the Form I-9 in combination with a Notice of Action (Form I-797C), stating that the original Employment Authorization Document has been automatically extended for up to 180 days, reverification applies upon the expiration of the automatically extended validity period under 8 C.F.R. 274a.13(d) and not upon the expiration date indicated on the face of the individual's Employment Authorization Document.

In order to reverify on the Form I-9, the employee or referred individual must present a document that either shows continuing employment eligibility or is a new grant of work authorization. The employer or the recruiter or referrer for a fee must review this document, and if it appears to be genuine and relate to the individual, reverify by noting the document's identification number and expiration date, if any, on the Form I-9 and signing the attestation by a handwritten signature or electronic signature in accordance with 8 C.F.R. 274a.2(i).

8 C.F.R. 274a.2(b)(1)(vii)

E-Verify

State agencies and institutions of higher education, including college districts, shall register and participate in the federal electronic verification of employment authorization program, E-Verify, for all newly hired employees.

The Texas Workforce Commission (TWC) shall provide notice, registration information, and online forms for the E-Verify program to state agencies and may provide technical assistance, upon request.

Gov't Code 673.002; 40 TAC 843.3

New Hire Reporting

"Newly hired employee" means an employee who has not been previously employed by the employer or was previously employed by the employer but has been separated from that employment for at least 60 consecutive days.

Each Texas employer, including each college district, shall furnish to the State Directory of New Hires (Texas Attorney General's Office) in the state in which a newly hired employee works a report of all new hires that contains the following seven required data elements: the employee name, the employee address, the employee social security number, the employee's date of hire, the employer name, the employer address, and the federal employer identification number (FEIN).

Employers, at their option may also provide the following additional information in the report: the employee's date of birth and the employee's expected salary or wages, and employer payroll addresses for mailing of notice to withhold child support.

All employers shall report new hire information on a Form W-4 or an equivalent form by first class mail, telephonically, or electronically as determined by the employer and in a format acceptable to the Title IV-D agency. The Title IV-D agency reserves the right to decline any type of form that it deems as illegible or inappropriate for new hire report processing and requests employers who elect to submit new hire reports via hard copy to adopt the prescribed Employer New Hire Reporting Form (Form 1856e and 1856s) that can be obtained from the Texas Attorney General's [Child Support Division](#)¹ website under Employer Portal.

42 U.S.C. 653a(b)–(c); Family Code 234.104; 1 TAC 55.303(a)–(c)

Deadline

Employer new hire reports are due:

1. Not later than 20 calendar days after the date the employer hires the employee; or
2. In the case of an employer transmitting reports electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

	Employer new hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency. <i>1 TAC 55.303(d)</i>
Penalties	An employer that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105. <i>42 U.S.C. 653a(d); Family Code 234.105</i>
Social Security Numbers	It shall be unlawful for any federal, state or local government agency, including a college district, to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose ~~his or her~~ the individual's social security number. <i>5 U.S.C. 552a Note; PL 93-579, 7(b), 88 Stat. 1896 (1974)</i>
Exceptions	The above provision shall not apply with respect to: 1. Any disclosure which is required by federal statute. 2. The disclosure of a social security number to a federal, state, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual. <i>5 U.S.C. 552a Note; PL 93-579, 7(b), 88 Stat. 1896 (1974)</i> It is the policy of the United States that any state (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such state (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if ~~he~~ the individual has more than one such number) issued to ~~him~~ the individual by the Commissioner of Social Security. <i>42 U.S.C. 405(c)(2)(C)</i>
Statement of Uses	A federal, state, or local agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it. <i>5 U.S.C. 552a Note; PL 93-579, 7(b), 88 Stat. 1896 (1974)</i>

**Criminal History
Records of Certain
Applicants**

Each institution of higher education, including each college district, is entitled to obtain from the Department of Public Safety (DPS) criminal history record information maintained by DPS that relates to a person who is an applicant for a security-sensitive position at the institution. The institution may deny employment to an applicant for a security-sensitive position who fails to provide a complete set of fingerprints upon request.

“Security-sensitive position” means an employment position held by an employee who:

1. Handles currency;
2. Has access to a computer terminal;
3. Has access to the personal information or identifying information of another person;
4. Has access to the financial information of the college district or another person;
5. Has access to a master key; or
6. Works in a location designated as a security-sensitive area.

A security-sensitive position shall be so identified in the job description and advertisement for the position.

The criminal history record information may be used only for the purpose of evaluating applicants for employment in security-sensitive positions.

The criminal history record information may not be released or disclosed to any person except on court order or with the consent of the person who is the subject of the criminal history record information.

All criminal history record information shall be destroyed by the chief of police of the institution of higher education as soon as practicable after the individual becomes employed in a security-sensitive position and after the expiration of any probationary term of employment or, if the individual is not hired for a security-sensitive position, after the information is used for its authorized purpose.

Gov’t Code 411.094; Education Code 51.215

A person, agency, department, political subdivision, or other entity that is authorized by Government Code Chapter 411, Subchapter F or Subchapter E-1 to obtain from DPS criminal history record information maintained by DPS that relates to another person is authorized to:

1. Obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to that person; or
2. Obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov't Code 411.087(a)

Participation in the
Criminal History
Clearinghouse

The purpose of the criminal history clearinghouse is to:

1. Provide authorized entities with the Texas and FBI fingerprint-based criminal history results.
2. Provide authorized entities with subscription and notification service to disseminate updated criminal history information.

Entities shall only submit requests for criminal history record information on a person who has authorized the access of their information. "Request for criminal history record information" is the processing and entry of a person's complete set of fingerprints in DPS's tenprint database and the comparison of those prints to DPS's latent print database and if authorized the entry into FBI's tenprint and comparison to the FBI's latent print database.

Entities may subscribe to a person in the clearinghouse, if the entity has the authority to view the record. Entities shall unsubscribe from a person when it no longer has authority to view a record.

Entities shall validate their subscriptions in accordance with DPS policies. "Validation" is a process whereby the subscriber reviews a subscription to determine whether they are still authorized to receive criminal history record information on that individual and updates the subscription accordingly. Validations are required on a yearly basis.

Entities shall maintain compliance with the FBI Criminal Justice Information Services Security Policy. Entities shall allow DPS and FBI to conduct audits of their clearinghouse accounts to prevent any unauthorized access, use, or dissemination of the information.

37 TAC 27.171, .172(4), (8), .174

**Drug and Alcohol
Clearinghouse Pre-
Employment Inquiry**

Employers must not employ a driver subject to controlled substances and alcohol testing under 49 C.F.R. Part 382 to perform a safety-sensitive function without first conducting a pre-employment query of the Drug and Alcohol Clearinghouse [see DHB] to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has

refused to submit to a test in violation of 49 C.F.R. 382.211; or that an employer has reported actual knowledge, as defined at 49 C.F.R. 382.107, that the driver used alcohol on duty in violation of 49 C.F.R. 382.205, used alcohol before duty in violation of 49 C.F.R. 382.207, used alcohol following an accident in violation of 49 C.F.R. 382.209, or used a controlled substance, in violation of 49 C.F.R. 382.213.

The employer must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

49 C.F.R. 382.701(a)

**Pre-Employment
Inquiry for Peace
Officers and
Telecommunications
Officers**

Before a law enforcement agency may hire a person licensed under Occupations Code Chapter 1701, the agency must, on a form and in the manner prescribed by the Texas Commission on Law Enforcement (TCOLE):

- 1. Obtain the person's written consent for the agency to review the information required to be reviewed under this section;**
- 2. Request from TCOLE and any other applicable person information required to be reviewed under this section; and**
- 3. Submit to TCOLE confirmation that the agency, to the best of the agency's ability before hiring the person:**
 - a. Contacted each entity or individual necessary to obtain the information required to be reviewed under this section; and**
 - b. Except as provided by Occupations Code 1701.451(b), obtained and reviewed as related to the person, as applicable, the information described by Section 1701.451(a)(3)(B).**

If an entity or individual contacted for information required to be reviewed under this section refused to provide the information or did not respond to the request for information, the confirmation submitted to TCOLE must document the manner of the request and the refusal or lack of response.

If TCOLE or a law enforcement agency receives from a law enforcement agency a request for information under this section and the person's consent on the forms and in the manner prescribed by TCOLE, TCOLE or the agency shall provide the information to the requesting agency.

The head of a law enforcement agency or the agency head's designee shall review and sign each confirmation form required under this section before submission to TCOLE. The failure of an agency head or the agency head's designee to comply with this subsection constitutes grounds for suspension of the agency head's license under Occupations Code 1701.501.

The confirmation form submitted to TCOLE under this section is not confidential and is subject to disclosure under Government Code Chapter 552 (Public Information Act).

Occupations Code 1701.451

Retirees

An institution of higher education, including a college district, may employ a person who has retired under the Teacher Retirement System (Government Code Title 8, Subtitle C) or the optional retirement program (Government Code Chapter 830) if:

1. The governing board of the institution determines that the employment is in the best interests of the institution; and
2. The person has been retired for at least 30 days before the effective date of the employment, except that a person retired under the optional retirement program may be rehired after retirement without a break in service.

The governing board may pay a person employed an amount considered by the governing board to be appropriate, notwithstanding any other provision of law.

Education Code 51.964

Report

An employer shall file a monthly certified statement of employment of a retiree in the form and manner required by the retirement system. *Gov't Code 824.6022; 34 TAC 31.2*

**Employment
Preference for
Veterans**

The following definitions shall apply to employment preferences for veterans.

Veteran

"Veteran" has the meaning assigned by Government Code 2308.251. *Gov't Code 657.001(2)*

**Veteran with a
Disability**

"Veteran with a disability" means a veteran who is classified as disabled by the U.S. Department of Veterans Affairs or its successor or the branch of the service in which the veteran served and whose disability is service connected. *Gov't Code 657.001(3)*

Eligibility

The following individuals qualify for a veteran's employment preference:

1. A veteran, including a veteran with a disability;
2. A veteran's surviving spouse who has not remarried; and
3. An orphan of a veteran if the veteran was killed while on active duty.

*Gov't Code 657.002*Application of the
Preference

An individual who qualifies for a veteran's employment preference is entitled to a preference in employment with or appointment to a state agency, including a college district, over other applicants for the same position who do not have a greater qualification.

A state agency shall provide to an individual entitled to a veteran's employment preference for employment or appointment over other applicants for the same position who do not have a greater qualification a veteran's employment preference, in the following order of priority:

1. A veteran with a disability;
2. A veteran;
3. A veteran's surviving spouse who has not remarried; and
4. An orphan of a veteran if the veteran was killed while on active duty.

If a state agency requires a competitive examination under a merit system or civil service plan for selecting or promoting employees, an individual entitled to a veteran's employment preference who otherwise is qualified for that position and who has received at least the minimum required score for the test is entitled to have a service credit of ten points added to the test score. A veteran with a disability is entitled to have a service credit of five additional points added to the individual's test score.

An individual entitled to a veteran's employment preference is not disqualified from holding a position with a state agency because of age or an established service-connected disability if the age or disability does not make the individual incompetent to perform the duties of the position.

*Gov't Code 657.003*Veteran
Employment Goal

Each state agency shall establish a goal of hiring, in full-time positions at the agency, a number of veterans equal to at least 20 percent of the total number of employees of the state agency. A state agency may establish a veteran employment goal that is greater than the required percentage. *Gov't Code 657.004*

Designation of Open Position	A state agency may designate an open position as a veteran's position and only accept applications for that position from individuals who are entitled to a veteran's employment preference under Government Code 657.003. Notwithstanding any other law, a state agency may hire or appoint for an open position within the agency an individual entitled to a veteran's employment preference under Section 657.003 without announcing or advertising the position if the agency uses the automated labor exchange system administered by the TWC to identify an individual who qualifies for a veteran's employment preference and determines the individual meets the qualifications required for the position. <i>Gov't Code 657.0045</i>
Interviews	For each announced open position at a state agency, the state agency shall interview: 1. If the total number of individuals interviewed for the position is six or fewer, at least one individual qualified for a veteran's employment preference under Government Code 657.003; or 2. If the total number of individuals interviewed for the position is more than six, a number of individuals qualified for a veteran's employment preference under Section 657.003 equal to at least 20 percent of the total number interviewed. A state agency that does not receive any applications from individuals who qualify for a veteran's employment preference under Section 657.003 is not required to comply. <i>Gov't Code 657.0047</i>
Employment Investigation	The individual whose duty is to appoint or employ an applicant for a position with a state agency or an officer or the chief administrator of the agency who receives an application for appointment or employment by an individual entitled to a veteran's employment preference, before appointing or employing any individual, shall investigate the qualifications of the applicant for the position. An applicant who is a veteran with a disability shall furnish the official records to the individual whose duty is to fill the position. <i>Gov't Code 657.005</i>
Federal Law and Grants	To the extent that this chapter conflicts with federal law or a limitation provided by a federal grant to a state agency, Government Code Chapter 657 shall be construed to operate in harmony with the federal law or limitation of the federal grant. <i>Gov't Code 657.006</i>
Reporting	A state agency shall file quarterly with the comptroller a report that states:

1. The percentage of the total number of employees hired or appointed by the agency during the reporting period who are persons entitled to a preference under Government Code Chapter 657;
2. The percentage of the total number of the agency's employees who are persons entitled to a preference under Chapter 657; and
3. The number of complaints filed with the executive director of the agency under Government Code 657.010 during that quarter and the number of those complaints resolved by the executive director.

The comptroller shall make each quarterly report available to the public on the comptroller's internet website.

Gov't Code 657.008

Posting
Requirements

A public entity or public work shall provide information to the TWC regarding any open position subject to the veterans' preferences as specified in Government Code 657.009.

A public entity or public work shall provide information by one or more of the methods indicated in 40 Administrative Code 843.1(b)(1)–(3) relating to the employer postings of job openings and submit basic information regarding the opening to the TWC as soon as practical, including the following:

1. The name of the public entity;
2. The location where the job is to be performed including city and state;
3. A description of the job opening;
4. The minimum educational and work experience required for the position; and
5. Contact information regarding the opening.

TWC shall make available to the public the information provided by a state agency.

Gov't Code 657.009(a)–(b); 40 TAC 843.2

Complaint
Procedures

An individual entitled to a veteran's employment preference under Government Code Chapter 657 who is aggrieved by a decision of a state agency to which Chapter 657 applies relating to hiring or appointing the individual, or relating to retaining the individual if the state agency reduces its workforce, may appeal the decision by filing a written complaint with the executive director of the state

	agency. The executive director of a state agency that receives a written complaint shall respond to the complaint not later than the 15th business day after the date the executive director receives the complaint. The executive director may render a different hiring or appointment decision than the decision that is the subject of the complaint if the executive director determines that the veteran's preference was not applied. <i>Gov't Code 657.010</i>
Employment Preference for Former Foster Children	An individual who was under the permanent managing conservatorship of the Department of Family and Protective Services on the day preceding the individual's 18th birthday is entitled to preference in employment with a state agency, including a college district, over other applicants for the same position who does not have a greater qualification. An individual is entitled to an employment preference under ~~this chapter~~ Government Code Chapter 672 only if the individual is 25 years of age or younger. <i>Gov't Code 672.002(a), .005</i>
Exceptions	This section does not apply to the position of private secretary or deputy of an official or department, or to an individual holding a strictly confidential relation to the employing officer. <i>Gov't Code 672.002(b)</i>
Conflict with Federal Law or Grant	To the extent that this preference conflicts with federal law or a limitation provided by a federal grant to a state agency, this section shall be construed to operate in harmony with federal law or limitation of the federal grant. <i>Gov't Code 672.003</i>
Grievance Process	An individual entitled to an employment preference under this section who is aggrieved by a decision of a state agency to which this section applies relating to hiring the individual, or relating to retaining the individual if the state agency reduces its workforce, may appeal the decision by filing a written complaint with the governing body of the state agency. The governing body of a state agency that receives a written complaint shall respond to the complaint not later than the 15th business day after the date the governing body receives the complaint. The governing body may render a different hiring decision than the decision that is the subject of the complaint if the governing body determines that the employment preference under this section was not applied. <i>Gov't Code 672.004</i>
Campus Programs for Minors	A program operator may not employ an individual in a position involving contact with campers at a campus program for minors unless: 1. The individual submits to the program operator or the campus program for minors has on file documentation that verifies the

individual within the preceding two years successfully completed the training and examination program on sexual abuse and child molestation; or

2. The individual successfully completes the campus program for minors' training and the examination program on sexual abuse and child molestation, which must be approved by the department, during the individual's first five days of employment by the campus program for minors, and the campus program issues and files documentation verifying successful completion.

The requirement does not apply to an individual who is a student enrolled at the institution of higher education or a private or independent institution of higher education or at which the campus program is conducted and whose contact with campers is limited to a single class of short duration.

A program operator must:

1. Submit to the ~~Texas~~ Department of State Health Services (DSHS), on the form and within the time prescribed by DSHS, verification that each employee of the campus program for minors has complied with the training and examination requirements and the fee assessed by DSHS; and
2. Retain in the operator's records a copy of the required documentation for each employee until the second anniversary of the examination date.

"Campus program for minors" means a program that:

1. Is operated by or on the campus of an institution of higher education or a private or independent institution of higher education;
2. Offers recreational, athletic, religious, or educational activities for at least 20 campers who are not enrolled at the institution; and attend or temporarily reside at the camp for all or part of at least four days; and
3. Is not a day camp or youth camp as defined by Health and Safety Code 141.002 or a facility or program required to be licensed by the Department of Family and Protective Services.

Education Code 51.976(a)(2), (b)–(d)

Consumer Credit Reports

Definitions

"Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

“Consumer report” includes any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for employment purposes.

“Consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

“Employment purposes,” when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

15 U.S.C. 1681a(d), (f), (h), (k)

Obtaining Reports

A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless:

1. A clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and
2. The consumer has authorized in writing (which authorization may be made on the document referred to in item 1) the procurement of the report by that person.

15 U.S.C. 1681b(b)(2)(A)

Exception

If a consumer described in 15 U.S.C. 1681b(2)(C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer’s rights under 15 U.S.C. 1681m(a)(3); and the consumer shall have consented orally, in writing, or electronically to the procurement of the report by that person. *15 U.S.C. 1681b(b)(2)(B)*

Adverse Action In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide the consumer to whom the report relates a copy of the report and a description in writing of the person's rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission. *15 U.S.C. 1681b(b)(3)*

Note: The following provisions apply to a college district that uses consumer reports.

Address Discrepancies "Notice of address discrepancy" means a notice sent to a user by a consumer reporting agency described in 15 U.S.C. 1681a(p) pursuant to 15 U.S.C. 1681c(h)(1) that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

A user, including a college district, must develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report, when the user receives a notice of address discrepancy.

A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency from whom it received the notice of address discrepancy when the user can form a reasonable belief that the consumer report relates to the consumer about whom the user requested the report, establishes a continuing relationship with the consumer, and regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy relating to the consumer was obtained.

16 C.F.R. 641.1(b), (c)(1), (d)(1)

Disposal of Records Any person, including a college district, who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

"Consumer information" means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information

does not include information that does not identify individuals, such as aggregate information or blind data.

“Dispose,” “disposing,” or “disposal” means discarding or abandoning of consumer information, or the sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

Reasonable measures to protect against unauthorized access to or use of consumer information in connection with its disposal include the following examples. These examples are illustrative only and are not exclusive or exhaustive methods for complying with the rule in 16 C.F.R. Part 682:

1. Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so the information cannot practicably be read or reconstructed;
2. Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of material, specifically identified as consumer information, in a manner consistent with this rule.

16 C.F.R. 682.1(b)–(c), .3

¹ Texas Attorney General's Child Support Division: <https://www.texasattorneygeneral.gov/child-support>

Fair Labor Standards Act

Minimum Wage and Overtime

Unless an exemption applies, each employer, including each college district, shall pay each of its employees not less than minimum wage for all hours worked. *29 U.S.C. 206(a)*

Unless an exemption applies, an employer shall pay an employee not less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 in any workweek, in accordance with 29 C.F.R. Part 778. *29 U.S.C. 207(a)(1); 29 C.F.R. 778*

Law Enforcement Officers

No public agency shall be deemed to have violated 29 U.S.C. 207(a) with respect to the employment of any employee in law enforcement activities if:

1. In a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed 171 hours compensation at a rate not less than one and one-half times the regular rate at which he is employed; or
2. In the case of such an employee to whom a work period of at least seven but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 171 hours bears to 28 days, compensation at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C. 207(k); 29 C.F.R. 553.230(b)–(c)

Breaks for Nonexempt Employees

Rest periods of up to 20 minutes must be counted as hours worked. Coffee breaks or time for snacks are rest periods, not meal periods. ~~*29 C.F.R. 785.18, .19(a)*~~

Bona fide meal periods of 30 minutes or more are not counted as hours worked if the employee is completely relieved from duty. The employee is not relieved from duty if the employee is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at ~~his or her~~ **the employee's** desk is working while eating. It is not necessary that an employee be permitted to leave the premises if the employee is otherwise completely freed from duties during the meal period. [See DG(LEGAL) for provisions requiring breaks for nursing mothers]

29 C.F.R. 785.18-.19

Compensatory Time
Accrual

Nonexempt employees may receive, in lieu of overtime compensation, compensatory time off at a rate of not less than one and one-

half hours for each hour of overtime work, pursuant to an agreement or understanding arrived at between the employer and employee before the performance of the work. Such agreement or understanding may be informal, such as when an employee works overtime knowing that the employer rewards overtime with compensatory time.

An employee may accrue not more than 240 hours of compensatory time. If the employee's overtime work included a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 480 hours of compensatory time. After the employee has reached these limits, the employee shall be paid overtime compensation for additional overtime work.

29 U.S.C. 207(o)(1)-(2), (3)(A); 29 C.F.R. 553.23(c)(1); Christensen v. Harris County, 529 U.S. 576 (2000)

*Payment for
Accrued Time*

Compensation paid to an employee for accrued compensatory time shall be paid at the regular rate earned by the employee at the time of payment. An employee who has accrued compensatory time off shall be paid for any unused compensatory time upon separation from employment at the rates set forth at 29 U.S.C. 207(o)(4). 29 U.S.C. 207(o)(3)(B), (4)

Use

An employee who has requested the use of compensatory time shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer.

The Fair Labor Standards Act (FLSA) does not prohibit an employer from compelling the use of accrued compensatory time.

29 U.S.C. 207(o)(5); Christensen v. Harris County, 529 U.S. 576 (2000); Houston Police Officers' Union v. City of Houston, 330 F.3d 298 (5th Cir. 2003)

Exempt Employees

The minimum wage and overtime provisions do not apply to any employee employed in a bona fide executive, administrative, or professional capacity. 29 U.S.C. 213(a)(1)

*Administrative
Employee*

The term "employee employed in a bona fide administrative capacity" shall mean any employee:

1. Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities;

2. Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
3. Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

29 C.F.R. 541.200(a)

Academic
Administrator

The term "employee employed in a bona fide administrative capacity" also includes an employee:

1. Who is compensated for services on a salary or fee basis at a rate of not less than \$684 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the educational establishment by which employed; and
2. Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

"Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

Employees engaged in academic administrative functions include:

1. Department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, and the like;
2. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and
3. Other employees with similar responsibilities.

Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers, or dietitians do not perform academic administrative functions, although such employees may qualify for another exemption.

29 C.F.R. 541.204

*Professional
Employee*

An “employee employed in a bona fide professional capacity” shall mean any employee:

1. Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and
2. Whose primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

29 C.F.R. 541.300(a)

Faculty

The term “employee employed in a bona fide professional capacity” also means any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term “educational establishment” means an institution of higher education or other educational institution. The salary basis requirements do not apply to teaching professionals.

Exempt teachers include: regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools’ responsibility in contributing to the educational development of the student.

The possession of an elementary or secondary teacher’s certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. However, a teacher's certificate is not generally necessary for employment in

institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

29 C.F.R. 541.204(b), .303

Other
Professionals

The professional employee exemption also applies to learned professionals, as described by 29 C.F.R. 541.301; creative professionals, as described by 29 C.F.R. 541.302; and employees engaged in the practice of law or medicine, as described by 29 C.F.R. 541.304.

*Computer
Employees*

Computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field are eligible for exemption as professionals. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.

The exemption applies to any computer employee compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging or other facilities and to any computer employee compensated on an hourly basis at a rate not less than \$27.63 an hour. In addition, the exemption applies only to computer employees whose primary duty consists of:

1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
2. The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
3. The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties that qualify the employees for exemption under 29 C.F.R. Part 541, Subpart B or Subpart C. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business,

scientific, or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion, or other change of status of the other programmers are given particular weight, generally meets the duties requirements for the executive exemption.

29 C.F.R. 541.400, .402

Salary Basis

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis as described in 29 C.F.R. 541.600, unless the employee is a teacher or the employee holds a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof. Subject to the exceptions listed in 29 C.F.R. 541.602, an employee must receive the full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. An employer that makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay exempt employees on a salary basis. *29 C.F.R. 541.600, .602(a), .603*

Highly
Compensated
Employees

An employee with total annual compensation, as described by 29 C.F.R. 541.601, of at least \$107,432 is deemed exempt if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in 29 C.F.R. Part 541, Subparts B, C, or D. *29 C.F.R. 541.601*

Partial-Day
Deductions

An employee of a public agency who otherwise meets the salary basis requirements shall not be disqualified from exemption on the basis that the employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and that requires the employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because:

1. Permission for its use has not been sought or has been sought and denied;
2. Accrued leave has been exhausted; or
3. The employee chooses to use leave without pay.

Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the work-week in which the furlough occurs and for which the employee's pay is accordingly reduced.

29 C.F.R. 541.710

*Safe Harbor
Policy*

If an employer has a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the ~~college district~~ employer will not lose the deduction unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

The best evidence of a clearly communicated policy is a written policy that was distributed to employees before the improper pay deductions by, for example, providing a copy of the policy to employees upon hire, publishing the policy in an employee handbook, or publishing the policy on the employer's intranet.

29 C.F.R. 541.603(d)

Wage and Hour
Records

Every employer shall maintain and preserve payroll or other records for nonexempt employees containing the information required by ~~the regulations under the FLSA~~. **29 C.F.R. 516.2.** *29 C.F.R. 516.2(a)*

**Employee with
Multiple
Appointments**

A full-time employee of an institution of higher education, including a college district, who has appointments to more than one position at the same institution may receive pay for working more than 40 hours in a week if the institution determines that pay in lieu of compensatory time is in the best interests of the institution. *Education Code 51.963*

Pay Increases
Generally

A college district shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. *Tex. Const. Art. III, Sec. 53*

Merit Salary
Increases

An institution of higher education, including a college district, may grant merit salary increases, including one-time merit payments, to employees described by this section. A merit salary increase made under Education Code 51.962 is compensation for purposes of Government Code Chapter 659, and salary and wages and member compensation for purposes of Government Code Title 8. An institution of higher education may pay a merit salary increase from any funds. Before awarding a merit salary increase, an institution

of higher education must adopt criteria for the granting of merit salary increases. To be eligible for a merit salary increase, an employee must have been employed by the institution of higher education for the six months immediately preceding the effective date of the increase and at least six months must have elapsed since the employee's last merit salary increase.

For employees employed by the institution of higher education for more than six months, the requirement that six months elapse between merit salary increases does not apply to a one-time merit payment if the chief administrative officer of the institution of higher education determines in writing that the one-time merit payment is made in relation to the employee's performance during a natural disaster or other extraordinary circumstance.

Education Code 51.962

Salary Advances
and Loans

A political subdivision, including a college district, shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. *Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry*, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)

**Payments in Excess
of Contractual
Amount**

A political subdivision, including a college district, may not pay an employee or former employee more than an amount owed under a contract with the employee unless the political subdivision holds at least one public hearing under this section.

Notice must be given of the hearing in accordance with notice of a public meeting under Government Code Chapter 551, Subchapter C.

The governing body of the political subdivision must state the following at the public hearing:

1. The reason the payment in excess of the contractual amount is being offered to the employee or former employee, including the public purpose that will be served by making the excess payment; and
2. The exact amount of the excess payment, the source of the payment, and the terms for the distribution of the payment that effect and maintain the public purpose to be served by making the excess payment.

Local Gov't Code 180.007

**Notice Regarding
Earned Income Tax
Credit**

Not later than March 1 of each year, each employer, including every college district, shall provide to the employer's employees information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

1. In person;
2. Electronically at the employee's last known email address;
3. Through a flyer included, in writing or electronically, as a payroll stuffer; or
4. By mailing the information to the employee at the employee's last known address by U.S. first class mail.

An employer may not satisfy this requirement solely by posting information in the workplace.

In addition, an employer may provide employees with IRS publications and forms, or information prepared by the comptroller, relating to the earned income tax credit.

Labor Code 104.001-.003

**Payday Law
Exemption**

The Texas Payday Law does not apply to the state or a political subdivision. *Labor Code 61.003*

**Information
Regarding Staff
Compensation**

~~"Compensation" includes an emolument provided in lieu of base salary or wages or a supplement to base salary or wages. Gov't Code 659.026(a)(1)~~

~~Compensation~~

~~"Executive staff" means:~~

~~Executive Staff~~

- ~~1. The director, executive director, commissioner, administrator, or other individual who is appointed by the governing body of a state agency or by another state officer to act as the chief executive officer or administrative head of the agency and who is not an appointed officer; and~~
- ~~2. Other management or senior-level staff members of a state agency who directly report to the individual listed in item 1.~~

~~Gov't Code 659.026(a)(2)~~

~~Internet Posting~~

~~A state agency, including a college district, shall make available to the public by posting on the agency's internet website:~~

- ~~1. The number of full-time equivalent employees employed by the agency;~~
- ~~2. The amount of legislative appropriations to the agency for each fiscal year of the current state fiscal biennium;~~

- ~~3. The agency's methodology, including any employment market analysis, for determining the compensation of executive staff employed by the agency, along with the name and position of the person who selected the methodology;~~
- ~~4. Whether executive staff are eligible for a salary supplement;~~
- ~~5. The market average for compensation of similar executive staff in the private and public sectors;~~
- ~~6. The average compensation paid to employees employed by the agency who are not executive staff; and~~
- ~~7. The percentage increase in compensation of executive staff for each fiscal year of the five preceding fiscal years and the percentage increase in legislative appropriations to the agency each fiscal year of the five preceding fiscal years.~~

~~Gov't Code 659.026(b)~~

**Gifts, Grants, and
Donations for Salary
Supplements**

Conflict of Interest
Provisions

A state agency, including a college district, by rule shall adopt conflict of interest provisions regarding the acceptance by the agency of a gift, grant, donation, or other consideration to be used as a salary supplement for an employee of the agency. The governing board of an institution of higher education shall adopt the conflict of interest provisions in the same manner as the board adopts other policies applicable to the institution. The agency shall post the conflict of interest provisions on the agency's internet website. Gov't Code 659.0201(c)

Internet Posting

A state agency that accepts a gift, grant, donation, or other consideration from a person that the person designates to be used as a salary supplement for an employee of the agency shall post on the agency's internet website, ~~in addition to the information required by Government Code 659.026,~~ the amount of each gift, grant, donation, or other consideration provided by the person that is designated to be used as a salary supplement for an employee of the agency. The agency may not post the name of the person. Gov't Code 659.0201(b)

Reports

The state auditor shall adopt a schedule and format for reporting information required by this section that does not require the release of information that identifies an anonymous donor. Gov't Code 659.0201(h)

Generally

Each state agency receiving a gift, grant, donation, or other consideration from a person that is designated to be used as a salary supplement for a named person, position, or endowment shall report the following information to the state auditor in the form determined by the state auditor:

1. Whether the person making the gift, grant, or donation or providing other consideration to the state agency is an individual or an entity;
2. If the person is an entity, the type of entity;
3. If the entity is a nonprofit entity or organization, whether the entity is classified as a supporting organization by the Internal Revenue Service;
4. If the entity is classified as a supporting organization by the Internal Revenue Service, the type of supporting organization, the name of the supported organization, and any other information relating to that classification;
5. Any internal or external oversight procedures the state agency has established to monitor the use of any gift, grant, donation, or other consideration the agency receives; and
6. How the state agency uses gifts, grants, donations, and other consideration the agency receives, including whether they are used to provide salary supplements for agency employees.

Gov't Code 659.0201(i)

*College District
Support Entities*

If the person making a gift, grant, or donation or providing other consideration to the state agency for the purpose of a salary supplement is an entity created solely to provide support for the state agency, the entity shall report to the agency:

1. The name of each person who makes gifts, grants, or donations, or provides other consideration to the entity, in an amount or having a value that exceeds \$10,000, unless the person has made a request to the entity to remain anonymous; and
2. The amount or value of each specific gift, grant, donation, or other consideration.

A state agency that receives the gift, grant, donation, or other consideration shall compile the information the agency receives into a report and submit the report to the state auditor and the legislature. The state auditor may review the report to identify any conflicts of interest or any other areas of risk. The state auditor shall report the results of the audit to the legislature.

The information provided to the institution of higher education is confidential and is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

Gov't Code 659.0201(d)–(g)

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

The governing board of each college or university supported in whole or in part by state funds shall issue regulations concerning the authorized and unauthorized absence from duty of faculty members, as defined by Education Code 51.101(3) [see Development Leaves of Absence, below], including teaching assistants and research assistants.

Each governing board shall file a copy of these regulations concerning employee absences with the Coordinating Board. Each governing board shall file any amendment to its regulations with the Coordinating Board not later than 30 days after the effective date of the amendment.

Education Code 51.108

Pregnancy

Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. 29 C.F.R. 1604.10(b)

**Religious
Observances**

An employer, including a college district, shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of the employer's business. An employer has met its obligation when it demonstrates that it has offered a reasonable accommodation to the employee. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship. 42 U.S.C. 2000e(j), 2000e-2(a); 29 C.F.R. 1605.2; Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986)

Religious Holy Days

An institution of higher education, including a college district, may not discriminate against or penalize in any way a faculty member who is absent from work for the observance of a religious holy day and gives proper notice of that absence if the customary and generally applicable educational practices of the institution permit general personal absence by faculty members. If personal absence is customarily penalized, the penalty for absence due to observance

of a religious holy day under this section shall be forfeiture of one day's pay equivalent for each day of absence.

"Proper notice" means that the faculty member shall provide a listing of religious holy days to be observed during the semester to the chairman of the department and shall provide notice of such days in advance to all students whose class would be canceled due to the faculty member's absence. This notice shall be in writing and shall be personally delivered to the chairman of the department, receipt therefore being acknowledged and dated by the chairman, or shall be sent by certified mail return receipt requested, addressed to the chairman.

A "religious holy day" shall be defined as a holy day observed by a religion whose places of worship are exempt from property taxation under Tax Code 11.20.

Education Code 51.925

Mental Health Leave

Each law enforcement agency shall develop and adopt a policy allowing the use of mental health leave by the peace officers employed by the agency who experience a traumatic event in the scope of that employment.

The mental health leave policy adopted under this section must:

- 1. Provide clear and objective guidelines establishing the circumstances under which a peace officer is granted mental health leave and may use mental health leave;**
- 2. Entitle a peace officer to mental health leave without a deduction in salary or other compensation;**
- 3. Enumerate the number of mental health leave days available to a peace officer; and**
- 4. Detail the level of anonymity for a peace officer who takes mental health leave.**

The mental health leave policy adopted under this section may provide a list of mental health services available to peace officers in the area of the law enforcement agency.

Gov't Code 614.015

Paid Quarantine Leave

The governing body of a political subdivision, including a college district, shall develop and implement a paid quarantine leave policy for peace officers and emergency medical techni-

cians who are employed by or appointed by the political subdivision and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

A paid quarantine leave policy must:

1. Provide that a peace officer or emergency medical technician on paid quarantine leave receive:
 - a. All employment benefits and compensation, including leave accrual, pension benefits, and health benefit plan benefits for the duration of the leave; and
 - b. Reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation; and
2. Require that the leave be ordered by the person's supervisor or the political subdivision's health authority.

A political subdivision may not reduce a peace officer's or emergency medical technician's sick leave balance, vacation leave balance, holiday leave balance, or other paid leave balance in connection with paid quarantine leave taken in accordance with a policy adopted under this section.

Local Gov't Code 180.008

Leave to Care for Sick Foster Child

An employer, including a college district, commits an unlawful employment practice if the employer administers a leave policy under which an employee is entitled to personal leave to care for or otherwise assist the employee's sick child and the leave policy does not treat in the same manner as an employee's biological or adopted minor child any foster child of the employee who resides in the same household as the employee and is under the conservatorship of the Department of Family and Protective Services. *Labor Code 21.0595*

Compliance with a Subpoena

An employer, including a college district, may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. *Labor Code 52.051(a)*

Jury Duty

An employer, including a college district, may not discharge, threaten to discharge, intimidate, or coerce any permanent employee because the employee serves as a juror, or grand juror, or for the employee's attendance or scheduled attendance in connection with the service, in any court in the United States. *Civil Practice & Remedies Code 122.001(a)*

**Attendance at
Truancy Hearing**

An employer, including a college district, may not terminate the employment of a permanent employee because the employee is required under Family Code 65.062(b) to attend a hearing. Notwithstanding any other law, an employee whose employment is terminated in violation of this section is entitled to return to the same employment that the employee held when notified of the hearing if the employee, as soon as practical after the hearing, gives the employer actual notice that the employee intends to return. *Family Code 65.063(a)–(b)*

**Development Leaves
of Absence**

For the purposes of this policy on development leaves, “faculty member” shall mean a person who is employed by an institution of higher education, including a college district, on a full-time basis as a member of the faculty or staff and whose duties include teaching, research, administration, including professional librarians, or the performance of professional services. However, the term does not include a person employed in a position that is in the institution’s classified personnel system or a person employed in a similar type of position if the institution does not have a classified personnel system. *Education Code 51.101*

**Granting Leaves of
Absence**

On the application of a faculty member, the governing board of an institution of higher education may grant a faculty development leave of absence for study, research, writing, field observations, or other suitable purpose, if:

1. The faculty member is eligible by reason of service.
2. The purpose for which a faculty development leave is sought is one for which a faculty development leave may be granted.
3. Granting the leave will not place on faculty development leave a greater number of faculty members than that authorized.

The governing board by regulation shall establish a procedure whereby the applications for faculty development leaves of absence are received by a committee elected by the general faculty for evaluation and whereby the faculty committee shall then make recommendations to the chief executive officer of the institution of higher education, who shall then make recommendations to the governing board as to which applications should be granted.

Education Code 51.103

Service Required

A faculty member shall be eligible to be considered for a faculty development leave when ~~he or she~~ **the individual** has served as a member of the faculty in the same institution of higher education for at least two consecutive academic years. This service may be as an instructor or as an assistant, associate, or full professor, or

Duration and
Compensation
Additional
Employment

an equivalent rank, and must be full-time academic duty but need not include teaching. *Education Code 51.104*

The governing board may grant to a faculty member development leave either for one academic year at one-half of the faculty member's regular salary or for one-half academic year at full regular salary. Payment of salary to the faculty member on a development leave may be made from the funds appropriated by the legislature specifically for that purpose or from such other funds as might be available to the institution.

A faculty member on a development leave may accept a grant for study, research, or travel from any institution of higher education or from a charitable, religious, or educational corporation or foundation, from any business enterprise, or from any federal, state, or local governmental agency. An accounting of all grants shall be made to the governing board of the institution by the faculty member.

A faculty member on development leave may not accept employment from any other person, corporation, or government, unless the governing board determines that the employment would be in the public interest to do so and expressly approves the employment.

Education Code 51.105

Number on Leave
at One Time

No more than six percent of the faculty members of any institution of higher education may be on faculty development leave at any one time.

A faculty member on faculty development leave shall continue to be a member of the Teacher Retirement System of Texas or of the Optional Retirement Program, or of both, just as any other faculty member on full-time duty.

The institution of higher education shall cause to be deducted from the compensation paid to a member of the faculty on faculty development leave the deposit and membership dues required to be paid by him to the Teacher Retirement System of Texas or to the Optional Retirement Program, or both, the contribution for Old Age and Survivors Insurance, and any other amounts required or authorized to be deducted from the compensation paid any faculty member. [See CDDA]

A member of the faculty on faculty development leave is a faculty member for purposes of participating in the programs and of receiving the benefits made available by or through the institution of higher education or the state to faculty members.

Education Code 51.106–107

Administrator
Development Leave

An employment contract entered into by the governing board of an institution of higher education with an administrator that is to be paid in whole or in part from appropriated funds may not allow for development leave that is inconsistent with Education Code 51.105.

An institution of higher education must require an administrator who receives development leave to:

1. Return to work at the institution for an amount of time equal to the amount of time the administrator received for development leave; or
2. Repay the institution for all the costs of the development leave, including the amount of the administrator's salary, if any, paid during the leave.

Notwithstanding Education Code 51.948(b)(3), the governing board of an institution may grant development leave at the faculty member's full, regular salary for one year to a faculty member who has held an administrative position at the institution for more than four years.

"Administrator" means a person who has significant administrative duties relating to the operation of the institution, including the operation of a department, college, program, or other subdivision of the institution.

"Contract" includes a letter of agreement or letter of understanding.

Education Code 51.948(a)–(b), (d), (f)–(g)

Absence Control

Uniform enforcement of a reasonable absence-control rule is not retaliatory discharge. For example, an employer that terminates an employee for violating a reasonable absence-control provision cannot be liable for retaliatory discharge as long as the rule is uniformly enforced. *Continental Coffee Products Co. v. Cazarez*, 937 S.W.2d 444 (Tex. 1996) (workers' compensation discrimination case); *Texas Division-Tranter, Inc. v. Carrozza*, 876 S.W.2d 312 (Tex. 1994) (workers' compensation discrimination case); *Swearingen v. Owens-Corning Fiberglas Corp.*, 968 F.2d 559 (5th Cir. 1992) (workers' compensation discrimination case); *Howell v. Standard Motor Prods., Inc.*, No. 4:99-CV-987-E, 2001 WL 912387, (N.D. Tex. Aug. 10, 2001) (Family and Medical Leave Act case); *Specialty Retailers v. DeMoranville*, 933 S.W.2d 490 (Tex. 1996) (age discrimination case); *Gonzalez v. El Paso Natural Gas Co.*, EP-81-CA-323, 1986 WL 4796, No. (W.D. Texas Mar. 5, 1986) (sex discrimination case)

COMPENSATION AND BENEFITS
LEAVES AND ABSENCES

DEC
(LEGAL)

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

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

**Federal Military
Leave**

Reemployment

Any person who is absent from a position of employment by reason of voluntary or involuntary service in the uniformed services shall be entitled to certain reemployment rights and benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301-4335, and its regulations at 20 C.F.R. Part 1002 if:

1. Unless notice is precluded by military necessity or is otherwise unreasonable or impossible, the person, or an appropriate officer of the uniformed service in which such service is performed, has given advance written or verbal notice of such service to such person's employer;
2. The cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years, calculated in accordance with 38 U.S.C. 4312(c); and
3. The person reports to or submits an application for reemployment to such employer in accordance with the provisions of 38 U.S.C. 4312(e) and (f) and 20 C.F.R. Part 1002, Subpart C.

38 U.S.C. 4312(a)–(c); 20 C.F.R. 1002.5(1)

For purposes of federal military leave, the term “uniformed services” means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; the commissioned officer corps of the National Oceanic and Atmospheric Administration (NOAA); system members of the National Urban Search and Rescue Response System during a period of appointment into federal service under Section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and any other category of persons designated by the president in time of war or emergency.

The term “service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active

duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, **state active duty for a period of 14 days or more, state active duty in response to a national emergency declared by the president under the National Emergencies Act, 50 U.S.C. 1601 et seq., state active duty in response to a major disaster declared by the president under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170**, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, **a period for which a system member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into federal service under Section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act**, and a period for which a person is absent from employment for the purpose of performing funeral honors duty.

The term “state active duty” means training or other duty, other than inactive duty, performed by a member of the National Guard of a state not under 32 U.S.C. 502 or under U.S.C. Title 10; in service to the governor of a state; and for which the member is not entitled to pay from the federal government.

A person who is reemployed under USERRA is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of uniformed service, plus the additional seniority rights, and benefits that such person would have attained if the person had remained continuously employed.

38 U.S.C. 4303(13), ~~(15)~~–(16), 4316(a)

Exceptions

An employer, including a college district, is not required to reemploy a person if:

1. The employer's circumstances have so changed as to make reemployment impossible or unreasonable;
2. The person is entitled to reemployment under 38 U.S.C. 4313(a)(3), 4313(a)(4), or 4313(b)(2)(B), and the reemployment of the person would impose an undue hardship on the employer; or
3. The employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

38 U.S.C. 4312(d)

A person's entitlement to the benefits of 38 U.S.C. Chapter 43 by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

1. A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.
2. A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the U.S. Secretary concerned.
3. A dismissal of such person permitted under or a dropping of such person from the rolls pursuant to 10 U.S.C. 1161(a) (dismissal of commissioned officers).

38 U.S.C. 4304

Notice

Each employer shall provide to persons entitled to rights and benefits under 38 U.S.C. Chapter 43 a notice of the rights, benefits, and obligations of such persons and such employers. The requirement for the provision of notice may be met by the posting of the notice where employers customarily place notices for employees. The U.S. Secretary of Labor shall provide to employers the text of the notice. *38 U.S.C. 4334*

**State Protections for
Member of Military or
Rescue Team**

Paid Leave of
Absence

A person who is an officer or employee of the state, a municipality, a county, or another political subdivision of the state, including a college district, and who is a member of the state military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team is entitled to a paid leave of absence from the person's duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a fiscal year. During a leave of absence, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. *Gov't Code 437.202(a)*

In addition to the leave provided under Government Code 437.202(a), a person described by Section 437.202(a) called to state active duty by the governor or another appropriate authority in response to a disaster is entitled to a paid leave of absence from the person's duties for each day the person is called to active duty during the disaster, not to exceed seven workdays in a fiscal year. During a leave of absence under this provision, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. For

purposes of this provision, "disaster" has the meaning assigned by Government Code 418.004. Gov't Code 437.202(a-1)

Notice

This state, a municipality, a county, or another political subdivision of this state shall provide written notice of the number of workdays of paid leave to which an officer or employee is entitled each fiscal year under Government Code 437.202(a) on employment, in the case of an employee or as soon as practicable after appointment or election, in the case of an officer.

This state, a municipality, a county, or another political subdivision of this state shall, on the request of an officer or employee described by Section 437.202(a), provide to that officer or employee a statement that contains the number of workdays for which the officer or employee claimed paid leave under Section 437.202(a) in that fiscal year.

Gov't Code 437.202(e)–(f)

**Return to
Employment**

An employee of this state or a municipality, a county, or another political subdivision of this state with at least five full-time employees who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty. An employer, including a college district, may not terminate the employment of an employee who is a member of the state military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment. *Gov't Code 437.202(d), 204(a)*

Reemployment

A public employee, other than a temporary employee, who leaves a state position or a position with a local governmental entity, including a college district, to enter active military service is entitled to be reemployed by the state or the local governmental entity; in the same department, office, commission, or board of this state, a state institution, or local governmental entity in which the employee was employed at the time of the employee's induction or enlistment in, or order to, active military service; and in the same position held at the time of the induction, enlistment, or order or to a position of similar seniority, status, and pay. To be entitled to reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions not later than the

fifth anniversary after the date of induction, enlistment, or call to active military service and must be physically and mentally qualified to perform the duties of the position.

“Military service” means service as a member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, the Texas National Guard, or the Texas State Guard.

Gov’t Code 613.001(2)–(3), .002

Exception

A public employee who cannot perform the duties of the position because of a disability sustained during military service is entitled to reemployment in the department, office, commission, or board of the state, a state institution, or a local governmental entity in a position that the employee can perform and that has like seniority, status, and pay as the former position or the nearest possible seniority, status, and pay. *Gov’t Code 613.003*

Application

To be reemployed, a veteran must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service. The application must be made in writing to the head of the department, office, commission, or board of this state, the state institution, or the local governmental entity and have attached to it evidence of the veteran’s discharge, separation, or release from military service under honorable conditions. *Gov’t Code 613.004*

Discharge

A person reemployed under Government Code Chapter 613 shall not be discharged without cause before the first anniversary of the date of the reemployment. *Gov’t Code 613.005*

Application of
Federal Laws to
Texas Military
Members Called to
Duty

A service member of the Texas military forces who is ordered to state active duty or to state training or other duty by the governor, the adjutant general, or another proper authority under the law of this state is entitled to the same benefits and protections provided to persons:

1. Performing service in the uniformed services as provided by 38 U.S.C. 4301–4313 and 4316–4319 (USERRA); and
2. In the military service of the United States as provided by 50 U.S.C. 3901-3959, 3991, and 4011-4026 (Servicemembers Civil Relief Act).

Gov’t Code 437.213

~~Note:~~ **Note:** For additional legally referenced material relating to this subject matter, see DAA(LEGAL). For information on student expression on campus, see FLA. For information on community expression on campus, see GD.

First Amendment

A governmental entity, including a college district, shall take no action respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the board for a redress of grievances. *U.S. Const. Amend. I, XIV*

College district employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to ~~his or her~~the employee's official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.

Garcetti v. Ceballos, 547 U.S. 410 (2006); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) [See also GD]

Academic Freedom Exception

Expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by the U.S. Supreme Court's customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analyses we conduct today would apply in the same manner to a case through speech related to scholarship or teaching. *Garcetti v. Ceballos*, 547 U.S. 410 (2006)

Protected Expression on Campus Under State Law

An institution of higher education, including a college district, shall:

1. Ensure that the common outdoor areas of the institution's campus are deemed traditional public forums; and
2. Permit any person to engage in expressive activities in those areas of the institution's campus freely, as long as the person's conduct is not unlawful, and does not materially and substantially disrupt the functioning of the institution.

Education Code 51.9315(c)

Education Code 51.9315(c) and (d) do not limit the right of student expression at other campus locations or prohibit faculty members

from maintaining order in the classroom. *Education Code 51.9315(e)*

Time, Place, and
Manner Restrictions

An institution of higher education may adopt a policy that imposes reasonable restrictions on the time, place, and manner of expressive activities in the common outdoor areas of the institution's campus if those restrictions:

1. Are narrowly tailored to serve a significant institutional interest;
2. Employ clear, published, content-neutral, and viewpoint-neutral criteria;
3. Provide for ample alternative means of expression; and
4. Allow members of the university community to assemble or distribute written material without a permit or other permission from the institution.

Education Code 51.9315(d)

Policy Required

By August 1, 2020, each institution of higher education shall adopt a policy detailing students' rights and responsibilities regarding expressive activities at the institution. The policy must:

1. Allow any person to, subject to reasonable restrictions adopted under Education Code 51.9315(d), engage in expressive activities on campus, including by responding to the expressive activities of others, and student organizations and faculty to, subject to Education Code 51.9315(h), invite speakers to speak on campus;
2. Establish disciplinary sanctions for students, student organizations, or faculty who unduly interfere with the expressive activities of others on campus;
3. Include a grievance procedure for addressing complaints of a violation of this section;
4. Be approved by a majority vote of the institution's governing board before final adoption; and
5. Be posted on the institution's internet website.

Education Code 51.9315(f)

Approval of
Speaker or
Determination of
Fee

In determining whether to approve a speaker to speak on campus or in determining the amount of a fee to be charged for use of the institution's facilities for purposes of engaging in expressive activities, an institution of higher education:

1. May consider only content-neutral and viewpoint-neutral criteria related to the needs of the event, such as:
 - a. The proposed venue and the expected size of the audience;
 - b. Any anticipated need for campus security;
 - c. Any necessary accommodations; and
 - d. Any relevant history of compliance or noncompliance by the requesting student organization or faculty member with the institution's policy adopted under Education Code 51.9315(f) and any other relevant policies; and
2. May not consider any anticipated controversy related to the event.

Education Code 51.9315(h)

Employee
Awareness

Each institution of higher education shall develop materials, programs, and procedures to ensure that the institution's employees responsible for educating or disciplining students understand the requirements of this section and all policies adopted by the institution in accordance with this section. *Education Code 51.9315(j)*

Publication

Each institution of higher education shall make the institution's policies adopted in accordance with this section available to students enrolled at and employees of the institution by including the policies in the institution's student handbook and personnel handbook, providing a copy of each policy to students during the institution's freshman or transfer student orientation, and posting the policies on the institution's internet website. *Education Code 51.9315(i)*

Report

Not later than December 1, 2020, each institution of higher education shall prepare, post on the institution's internet website, and submit to the governor and the members of the legislature a report regarding the institution's implementation of the requirements under this section. *Education Code 51.9315(k)*

Places of Worship

A government agency, including a college district, or public official may not issue an order that closes or has the effect of closing places of worship in this state or in a geographic area of this state. "Place of worship" means a building or grounds where religious activities are conducted. Civ. Prac. & Rem. Code 110.001(a), .0031

Searches— General Rule

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. *U.S. Const. Amend. IV; Tex. Const. Art. I, Sec. 9*

A governmental entity, including a college district, may search an employee or an employee's property if:

1. The governmental entity has reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct or that the search is necessary for a non-investigatory, work-related purpose; and
2. The search is reasonably related in scope to the circumstances that justified the interference in the first place.

City of Ontario, Cal. v. Quon, ~~130~~560 U.S. ~~Ct. 2619~~746 (2010); *O'Connor v. Ortega*, 480 U.S. 709 (1987)

Drug / Alcohol Testing

Blood, urine, and breath tests of public employees to determine drug use are searches under the Fourth Amendment of the U.S. Constitution. *Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602 (1989)

Random Drug Testing

A governmental entity may conduct drug tests, without a warrant and without individualized suspicion, when the test serves special governmental needs that outweigh the individual's privacy expectation. *Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602 (1989); *Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989)

Safety-Sensitive Positions

Random alcohol and drug testing of employees in "safety-sensitive" positions may be permissible when the intrusiveness of the search is minimal and the governing board of a governmental entity is able to demonstrate that the drug-testing program furthers its interest in ensuring the physical safety of students. "Safety-sensitive" positions include those that involve the handling of potentially dangerous equipment or hazardous substances in an environment including a large number of children. *Aubrey v. School Board of LaFayette Parish*, 148 F.3d 559 (5th Cir. 1998)

Note: The following testing requirements apply to every employee who operates a commercial motor vehicle and is subject to commercial driver's license requirements in accordance with federal regulations.

Testing of Drivers

An employer, including a college district, shall conduct testing, in accordance with federal regulations, of commercial motor vehicle

	operators for use of alcohol or a controlled substance that violates law or federal regulation. <i>49 U.S.C. 31306; 49 C.F.R. Part 382</i>
Commercial Motor Vehicle	A “commercial motor vehicle” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle: 1. Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or 2. Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or 3. Is designed to transport 16 or more passengers, including the driver; or 4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, 49 U.S.C. 5103(b), and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 C.F.R. Part 172, Subpart F. <i>49 C.F.R. 382.107</i>
Testing Procedures	Each employer shall ensure that all alcohol or controlled substances testing conducted under 49 C.F.R. Part 382 complies with the procedures set forth in 49 C.F.R. Part 40. <i>49 C.F.R. 382.105</i>
Tests Required	No driver shall refuse to submit to a preemployment controlled substance test required under 49 C.F.R. 382.301, a post-accident alcohol or controlled substances test required under 49 C.F.R. 382.303, a random alcohol or controlled substances test required under 49 C.F.R. 382.305, a reasonable suspicion alcohol or controlled substances test required under 49 C.F.R. 382.307, a return-to-duty alcohol or controlled substances test required under 49 C.F.R. 382.309, or follow-up alcohol or controlled substances test required under 49 C.F.R. 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions. <i>49 C.F.R. 382.211</i>
Education and Treatment	As an employer, a college district is not required to provide a substance abuse professional (SAP) evaluation or any subsequent recommended education or treatment for an employee who has violated a U.S. Department of Transportation (DOT) drug and alcohol regulation.

However, if a college district offers that employee an opportunity to return to a DOT safety-sensitive duty following a violation, the college district must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP and that the employee successfully complies with the SAP's evaluation recommendations. Payment for SAP evaluations and services is left for employers and employees to decide and may be governed by existing management-labor agreements and health care benefits.

49 C.F.R. 40.289

Return-to-Duty
Testing

As the employer, if a college district decides that it wants to permit the employee to return to the performance of safety-sensitive functions, the college district must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties. *49 C.F.R. 40.305(a)*

As an employer, a college district must not return an employee to safety-sensitive duties until the employee meets the conditions of 49 C.F.R. 40.305(a). However, the college district is not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that the college district has the discretion to make, subject to legal requirements. *49 C.F.R. 40.305(b)*

Drug and Alcohol
Clearinghouse

The U.S. Secretary of Transportation shall establish, operate, and maintain a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators. The clearinghouse shall function as a repository for records relating to the positive test results and test refusals of commercial motor vehicle operators and violations by such operators of prohibitions set forth in 49 C.F.R. Part 382, Subpart B or any subsequent corresponding regulations. *49 U.S.C. 31306a(a)(1), (3)*

Annual Query

In accordance with 49 C.F.R. 382.701(b), employers must conduct a query of the clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under 49 C.F.R. Part 382 to determine whether information exists in the clearinghouse about those employees. *49 C.F.R. 382.701(b)(1)*

Prohibition

Except as described by 49 C.F.R. 382.701(d), no employer may allow a driver **the employer employs or intends to hire or use** to

perform any safety-sensitive function if the results of a clearing-house query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of 49 C.F.R. 382.211; or that an employer has reported actual knowledge, as defined at 49 C.F.R. 382.107, that the driver used alcohol on duty in violation of 49 C.F.R. 382.205, used alcohol before duty in violation of 49 C.F.R. 382.207, used alcohol following an accident in violation of 49 C.F.R. 382.209, or used a controlled substance in violation of 49 C.F.R. 382.213. *49 C.F.R. 382.701(d)*

Recordkeeping

Employers must retain for three years a record of each query and all information received in response to each query. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement. *49 C.F.R. 382.701(e)*

Educational
Materials

Each employer shall provide educational materials that explain the requirements of 49 C.F.R. Part 382 and the employer's policies and procedures with respect to meeting these requirements. The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under Part 382 and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle. Each employer shall provide written notice to representatives of employee organizations of the availability of this information. The materials to be made available to drivers shall include detailed discussion of at least the items listed at 49 C.F.R. 382.601. Each employer shall ensure that each driver is required to sign a statement certifying that ~~he or she~~ **the driver** has received a copy of these materials. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver. *49 C.F.R. 382.601*

Reports
Federal

Employers must report the following information about a driver to the clearinghouse by the close of the third business day following the date on which they obtained that information:

1. An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
2. A negative return-to-duty test result;
3. A refusal to take an alcohol test pursuant to 49 C.F.R. 40.261;
4. A refusal to test determination made in accordance with 49 C.F.R. 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under 49 C.F.R.

40.191(a)(11), the employer may report only those admissions made to the specimen collector; and

5. A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with 49 C.F.R. 40.307, 40.309, and 40.311.

An employer must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at 49 C.F.R. 382.107, of:

1. On-duty alcohol use pursuant to 49 C.F.R. 382.205;
2. Pre-duty alcohol use pursuant to 49 C.F.R. 382.207;
3. Alcohol use following an accident pursuant to 49 C.F.R. 382.209; and
4. Controlled substance use pursuant to 49 C.F.R. 382.213.

The reports must contain the information described by 49 C.F.R. 382.705(b).

Any employer may designate a consortium/third-party administrator (C/TPA) to perform the employer reporting requirements. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with the reporting requirements.

49 C.F.R. 382.107, .705(b)–(c)

State

An employer required to conduct alcohol and drug testing of an employee who holds a commercial driver's license under Transportation Code Chapter 522 under federal safety regulations as part of the employer's drug testing program or consortium, as defined by 49 C.F.R. Part 382, shall report the following information to the Department of Public Safety:

1. A valid positive result on an alcohol or drug test performed and whether the specimen producing the result was a dilute specimen. "Valid positive result" means an alcohol concentration of 0.04 or greater on an alcohol confirmation test, or a result at or above the cutoff concentration levels listed in 49 C.F.R. 40.87 on a confirmation drug test. "Dilute specimen" means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.
2. A refusal to provide a specimen for an alcohol or drug test.
3. An adulterated specimen or substituted specimen, as those terms are defined by 49 C.F.R. 40.3, on an alcohol or drug test performed.

For purposes of this requirement, “employee” means any person who is designated in a U.S. Department of Transportation (DOT) agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to preemployment testing.

~~Transp~~*Trans.* Code 644.251–.252; 49 C.F.R. 40.3

**Child Abuse
Reporting Policy and
Training**

Each institution of higher education shall adopt a policy governing the reporting of child abuse and neglect as required by Family Code Chapter 261 for the institution and its employees. The policy must require each employee of the institution to report child abuse and neglect in the manner required by Family Code Chapter 261.

Each institution of higher education shall provide training for employees who are professionals as defined by Family Code 261.101 in prevention techniques for and the recognition of symptoms of sexual abuse and other maltreatment of children and the responsibility and procedure of reporting suspected occurrences of sexual abuse and other maltreatment. The training must include:

1. Techniques for reducing a child's risk of sexual abuse or other maltreatment;
2. Factors indicating a child is at risk for sexual abuse or other maltreatment;
3. The warning signs and symptoms associated with sexual abuse or other maltreatment and recognition of those signs and symptoms; and
4. The requirements and procedures for reporting suspected sexual abuse or other maltreatment as provided by Family Code Chapter 261.

Education Code 51.9761

**Reporting Abuse and
Neglect**

All Employees

A person having **reasonable** cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by Family Code Chapter 261, Subchapter B. *Family Code 261.101(a)*

A person or professional shall make a report in the manner required by Family Code 261.101(a) or (b), as applicable, if the person or professional has **reasonable** cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of:

1. Another child; or
2. An elderly person or person with a disability as defined by Human Resources Code 48.002.

Family Code 261.101(b-1)

Professional
Employees

If a professional has **reasonable** cause to believe that a child has been abused or neglected or may be abused or neglected, or that

a child is a victim of an offense under Penal Code 21.11 (indecent with a child), and the professional has **reasonable** cause to believe that the child has been abused as defined by Family Code 261.001 ~~or 261.401~~, the professional shall make a report not later than the 48th hour after the hour the professional first ~~suspects~~**has reasonable cause to believe** that the child has been or may be abused or neglected or is a victim of an offense under Penal Code 21.11 (indecent with a child). A professional may not delegate to or rely on another person to make the report.

"Professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, and employees of a clinic or health care facility that provides reproductive services.

Family Code 261.101(b)

Appropriate Agency
to Receive Reports

A report shall be made to:

1. Any local or state law enforcement agency;
2. The Department of Family and Protective Services (DFPS); or
3. The state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred.

A report, other than a report under item 3, must be made to DFPS if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

Family Code 261.103

**Adverse
Employment Action
Prohibited**

An employer may not suspend or terminate the employment of, discriminate against, or take any other adverse employment action against a person who is a professional and who in good faith:

1. Reports child abuse or neglect to:
 - a. The person's supervisor;
 - b. An administrator of the facility where the person is employed;
 - c. A state regulatory agency; or
 - d. A law enforcement agency; or

2. Initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

“Adverse employment action” means an action that affects an employee’s compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from making or supporting a report of abuse or neglect under Family Code 261.101.

Family Code 261.110(a)–(b)

Note: This policy addresses employee complaints of sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation targeting employees. For additional legally referenced material relating to this subject matter, see DAA(LEGAL). For sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and retaliation targeting students, see FFDA.

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Section I: Title IX

Definitions

Complainant

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. *34 C.F.R. 106.30(a)*

Respondent

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. *34 C.F.R. 106.30(a)*

*Education
Program or
Activity*

For the purposes of 34 C.F.R. 106.44, 34 C.F.R. 106.30, and 34 C.F.R. 106.45, “education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. *34 C.F.R. 106.44(a)*

*Sexual
Harassment*

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

34 C.F.R. 106.30(a)

Formal Complaint

“Formal complaint” means a document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.

The phrase “document filed by a complainant” means a document or electronic submission, such as by electronic mail or through an online portal provided for this purpose by the recipient, that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

34 C.F.R. 106.30(a)

*Actual
Knowledge*

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient.

“Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX coordinator as described in 34 C.F.R. 106.8(a).

34 C.F.R. 106.30(a)

*Supportive
Measures*

“Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

34 C.F.R. 106.30(a)

Notice of
Nondiscrimination

Each recipient must notify persons entitled to a notification under 34 C.F.R. 106.8(a) that the recipient does not discriminate on the basis of sex in the education program or activity that it operates,

and that it is required by Title IX and 34 C.F.R. Part 106 not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, unless 34 C.F.R. Part 106, Subpart C does not apply, and that inquiries about the application of Title IX and 34 C.F.R. Part 106 to such recipient may be referred to the recipient's Title IX coordinator, to the Assistant Secretary, or both. *34 C.F.R. 106.8(b)(1)*

Title IX Coordinator Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under 34 C.F.R. Part 106, which employee must be referred to as the "Title IX coordinator." *34 C.F.R. 106.8(a)*

Grievance Procedures A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by 34 C.F.R. Part 106 and a grievance process that complies with 34 C.F.R. 106.45 for formal complaints. These requirements apply only to sex discrimination occurring against a person in the United States. *34 C.F.R. 106.8(c-d); North Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982)*

Process for Formal Complaints
Conflict of Interest Prohibited A recipient's grievance process must require that any individual designated by a recipient as a Title IX coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. *34 C.F.R. 106.45(b)*

Training A recipient must ensure that Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in 34 C.F.R. 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in 34 C.F.R. 106.45(b)(6).

A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in 34 C.F.R. 106.45(b)(5)(vii).

Any materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

34 C.F.R. 106.45(b)

Time Frames	A recipient's grievance process must include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. <i>34 C.F.R. 106.45(b)</i>
Presumption of Responsibility Prohibited	A recipient's grievance process must include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. <i>34 C.F.R. 106.45(b)</i>
Information Subject to Privilege	A recipient's grievance process must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. <i>34 C.F.R. 106.45(b)</i>
Evaluation of Evidence and Credibility Determinations	A recipient's grievance process must require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness. <i>34 C.F.R. 106.45(b)</i>
Standard of Evidence	A recipient's grievance process must state whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against em-

	ployees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment. <i>34 C.F.R. 106.45(b)</i>
Supportive Measures	A recipient's grievance process must describe the range of supportive measures available to complainants and respondents. <i>34 C.F.R. 106.45(b)</i>
Sanctions and Remedies	A recipient's grievance process must treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with 34 C.F.R. 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described in 34 C.F.R. 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. A recipient's grievance process must describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility. <i>34 C.F.R. 106.45(b)</i>
Appeals	A recipient's grievance process must include the procedures and permissible bases for the complainant and respondent to appeal. <i>34 C.F.R. 106.45(b)</i>
Additional Procedures	Any provisions, rules, or practices other than those required by Section 106.45 that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in 34 C.F.R. 106.30, must apply equally to both parties. <i>34 C.F.R. 106.45(b)</i>
Reporting	Any person may report sex discrimination, including sexual harassment, whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX coordinator, or by any other means that results in the Title IX coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX coordinator. <i>34 C.F.R. 106.8(a)</i>

*Formal Complaint
Filing*

A formal complaint may be filed with the Title IX coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX coordinator under 34 C.F.R. 106.8(a), and by any additional method designated by the recipient. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

Where the Title IX coordinator signs a formal complaint, the Title IX coordinator is not a complainant or otherwise a party under 34 C.F.R. Part 106 or under 34 C.F.R. 106.45, and must comply with the requirements of 34 C.F.R. Part 106, including 34 C.F.R. 106.45(b)(1)(iii). *34 C.F.R. 106.30(a)*

Consolidation of
Complaints

A recipient may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. *34 C.F.R. 106.45(b)(4)*

Notice of
Allegations

Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:

1. Notice of the recipient's grievance process that complies with 34 C.F.R. 106.45, including any informal resolution process.
2. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in 34 C.F.R. 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under Section 106.30, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under 34 C.F.R. 106.45(b)(5)(iv), and may inspect and review evidence under Section 106.45(b)(5)(vi). The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to item 2, above, the recipient must provide notice of the additional allegations to the parties whose identities are known.

34 C.F.R. 106.45(b)(2)

Response to Sexual
Harassment

A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

A recipient's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with 34 C.F.R. 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

The U.S. Department of Education may not deem a recipient to have satisfied the recipient's duty to not be deliberately indifferent under 34 C.F.R. Part 106 based on the recipient's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment. *34 C.F.R. 106.44(a)*

*Response to
Formal Complaint*

In response to a formal complaint, a recipient must follow a grievance process that complies with 34 C.F.R. 106.45. With or without a formal complaint, a recipient must comply with 34 C.F.R. 106.44(a).

A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

34 C.F.R. 106.44(b), .45(a)

Informal Resolution

A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with 34 C.F.R. 106.45. Similarly, a recipient may not require the

parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient:

1. Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. Obtains the parties' voluntary, written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

34 C.F.R. 106.45(b)(9)

Investigation

When investigating a formal complaint and throughout the grievance process, a recipient must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties provided that the recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section.
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
4. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
7. Create an investigative report that fairly summarizes relevant evidence and, at least ten days prior to a hearing, if a hearing is required under this section or otherwise provided, or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

34 C.F.R. 106.45(b)(5)

Hearings	For postsecondary institutions, the recipient's grievance process must provide for a live hearing. <i>34 C.F.R. 106.45(b)(6)(i)</i>
<i>Conduct of Hearing</i>	Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. <i>34 C.F.R. 106.45(b)(6)(i)</i>
<i>Cross-Examination</i>	At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the recipient under <i>34 C.F.R. 106.45(b)(5)(iv)</i> to otherwise restrict the extent to which advisors may participate in the proceedings. If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. <i>34 C.F.R. 106.45(b)(6)(i)</i>
Relevance	Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. <i>34 C.F.R. 106.45(b)(6)(i)</i>

Refusal to Submit to Cross- Examination	If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. 34 C.F.R. 106.45(b)(6)(i)
<i>Recording</i>	Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. 34 C.F.R. 106.45(b)(6)(i)
Determination Regarding Responsibility	The decision-maker(s), who cannot be the same person(s) as the Title IX coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described in 34 C.F.R. 106.45(b)(1)(vii). The written determination must include: 1. Identification of the allegations potentially constituting sexual harassment as defined in 34 C.F.R. 106.30; 2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held; 3. Findings of fact supporting the determination; 4. Conclusions regarding the application of the recipient's code of conduct to the facts; 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and 6. The recipient's procedures and permissible bases for the complainant and respondent to appeal. The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an

appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX coordinator is responsible for effective implementation of any remedies.

34 C.F.R. 106.45(b)(7)

Dismissal of
Complaint

The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 34 C.F.R. 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or 34 C.F.R. Part 106; such a dismissal does not preclude action under another provision of the recipient's code of conduct.

The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted pursuant to this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

34 C.F.R. 106.45(b)(3)

Appeals

A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A recipient may offer an appeal equally to both parties on additional bases. As to all appeals, the recipient must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in 34 C.F.R. 106.45(b)(1)(iii);
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

34 C.F.R. 106.45(b)(8)

Confidentiality

The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. Part 99, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *34 C.F.R. 106.71(a)*

Retaliation
Prohibited

No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or 34 C.F.R. Part 106, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Part 106. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or Part 106, constitutes retaliation. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under 34 C.F.R. 106.8(c).

The exercise of rights protected under the First Amendment does not constitute prohibited retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under 34 C.F.R. Part 106 does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

34 C.F.R. 106.71

Removal or Leave

Nothing in 34 C.F.R. Part 106 precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Nothing in 34 C.F.R. Part 106, Subpart D precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with 34 C.F.R. 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

34 C.F.R. 106.44(c)–(d)

Publication

*Title IX
Coordinator and
Notice of Non-
discrimination*

The recipient must notify applicants for admission and employment, students, parents, or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX coordinator. *34 C.F.R. 106.8(a)*

Each recipient must prominently display the contact information required to be listed for the Title IX coordinator and the policy described in 34 C.F.R. 106.8(b)(1) on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under 34 C.F.R. 106.8(a).

A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on

the basis of sex except as such treatment is permitted by Title IX or 34 C.F.R. Part 106.

34 C.F.R. 106.8(b)(2)

*Grievance
Procedures and
Process*

A recipient must provide to persons entitled to a notification under 34 C.F.R. 106.8(a) notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond. *34 C.F.R. 106.8(c)*

*Training
Materials*

A recipient must make the materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on its website, or if the recipient does not maintain a website, the recipient must make these materials available upon request for inspection by members of the public. *34 C.F.R. 106.45(b)(10)*

Recordkeeping

A recipient must maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under 34 C.F.R. 106.45 (b)(6)(i), any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

For each response required under 34 C.F.R. 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The

documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

34 C.F.R. 106.45(b)(10)

Section II: State Law

Definitions

*Dating Violence,
Sexual Assault,
and Stalking*

"Dating violence," "sexual assault," and "stalking" have the same meanings assigned by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. Section 1092(f)(6)(A). *Education Code 51.251(2); 19 TAC 3.3(c)*

*Sexual
Harassment*

"Sexual harassment" means unwelcome, sex-based verbal or physical conduct that:

1. In the employment context, unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment; or
2. In the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities.

Education Code 51.251(5); 19 TAC 3.3(e)

Employee

"Employee of a postsecondary educational institution" does not include a student enrolled at the institution. *Education Code 51.251(3)*

*Course and
Scope of
Employment*

"Course and scope of employment" means an employee performing duties in the furtherance of the institution's interests. *19 TAC 3.3(b)*

*Sexual Assault
Policy*

Each postsecondary educational institution, including each college district, shall adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each enrolled student and each employee of the institution and have the policy approved by the institution's governing body. The policy must include:

1. Definitions of prohibited behavior.
2. Sanctions for violations.
3. Protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking that complies with the electronic reporting requirement in 19 Administrative Code 3.7.

4. Interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking pending the institution's disciplinary process, including protection from retaliation, and any other accommodations or supportive measures available to those victims at the institution. This section is not intended to limit an institution's ability to implement accommodations to others as needed.
5. A statement regarding:
 - a. The importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;
 - b. The right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report; and
 - c. The right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.

As part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under this section, each postsecondary educational institution shall:

1. To the greatest extent practicable based on the number of counselors employed by the institution, ensure that each alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, or stalking and any other person who reports such an incident are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and
2. Notwithstanding any other law, allow an alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, and stalking to drop a course in which both parties are enrolled without any academic penalty.

Education Code 51.282(a); 19 TAC 3.4(a), (d)(2)(C)

Review

Each postsecondary educational institution shall review its sexual harassment, sexual assault, dating violence, and stalking policy at least each biennium and revise the policy as necessary and obtain approval from the institution's governing board. *Education Code 51.282(f); 19 TAC 3.4(e)*

<i>Distribution</i>	Each postsecondary educational institution shall make its policy on sexual harassment, sexual assault, dating violence, and stalking available to students, faculty, and staff members by: 1. Including the policy in the student handbook and personnel handbook or the institution's equivalent(s); and 2. Creating and maintaining a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the institution's homepage. <i>Education Code 51.282(b); 19 TAC 3.4(b)</i>
Responsible Employee	Each postsecondary educational institution shall designate one or more employees to act as responsible employees for purposes of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq and inform each student enrolled at the institution of the designated responsible employees. <i>Education Code 51.290(a); 19 TAC 3.14(a)</i>
Reporting <i>Employee Reporting Required</i>	An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator. The employee is required to report an incident regardless of when or where the incident occurred. Institutions may establish additional reporting avenues to comply with this section provided that the reports are promptly routed to the Title IX coordinator or deputy Title IX coordinator. <i>Education Code 51.252(a); 19 TAC 3.5(a)</i>
Exception from Reporting	A person is not required to make a report under this section concerning: 1. An incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking; 2. An incident of which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by a postsecondary educational institution or by a student organization affiliated with the institution; or

3. A sexual harassment, sexual assault, dating violence, or stalking incident in which the person has either learned of the incident during the course of his or her institution's review or process or has confirmed with the person or office overseeing the review or process, that the incident has been previously reported.

Education Code 51.252(d); 19 TAC 3.5(d)

Contents of
Report

The report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident. *Education Code 51.252(b); 19 TAC 3.5(b)*

Limitations on
Reporting

*Designated
Confidential
Employees*

Each postsecondary educational institution shall designate one or more employees as persons to whom students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking and inform each student enrolled at the institution of the designated confidential employees.

A confidential employee designated under this section may not disclose any communication made by a student to the employee unless the student consents to the disclosure or the employee is required to make the disclosure under 19 Administrative Code 3.5(c), state law, or federal law.

Absent consent from the reporting student, an employee designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking shall only state the type of incident reported and may not include any information that would violate a student's expectation of privacy.

Education Code 51.252(c), .290(a), (c); 19 TAC 3.5(c), .14

*Confidential
Employees
Under Other
Law*

Absent consent from the reporting individual, an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking under circumstances that render the employee's communications confidential or privileged under other law shall only state the type of incident reported and may not include any information that would violate an expectation of privacy. *Education Code 51.252(c); 19 TAC 3.5(c)*

*Medical
Providers*

Absent consent from the victim(s), an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking in the course and scope of employment as a health-care provider, mental health-care provider, or other medical provider shall only state the type of incident reported

and may not include any information that would violate an expectation of privacy. *Education Code 51.291(d); 19 TAC 3.5(c)*

**Campus
Peace
Officers**

A campus peace officer employed by a postsecondary educational institution who receives information regarding an incident described by Education Code 51.252(a) from an alleged victim who chooses to complete a pseudonym form described by Code of Criminal Procedure Article 58.102, 58.152, 58.202, or 58.252 shall, in making a report, state only the type of incident reported and may not include the victim's name, phone number, address, or other information that may directly or indirectly reveal the victim's identity. *Education Code 51.252(c-1)*

**Multiple
Confidential
Employees**

When multiple confidential employees receive information about the same incident (e.g., student health center or counseling center), only a single report stating the type of incident is required. *19 TAC 3.5(c)*

**Reporting
Under Other
Law**

These limitations on disclosure do not affect the employee's duty to report an incident under any other law, including but not limited to, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f), Family Code 261.101, or Health and Safety Code 611.004. *Education Code 51.290(c); 19 TAC 3.5(c)*

**Failure to Report
or False Report**

A person commits an offense if the person is required to make a report under Education Code 51.252 and knowingly fails to make the report or with the intent to harm or deceive, knowingly makes a report under ~~Education Code~~Section 51.252 that is false.

A postsecondary educational institution shall terminate the employment of an employee whom the institution determines in accordance with the institution's disciplinary procedure to have committed the offense.

Education Code 51.255(a), (c); 19 TAC 3.8

**Electronic
Reporting**

Each postsecondary educational institution, including each college district, shall provide an option for electronic reporting to the institution by an enrolled student or an employee of the institution of an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The electronic reporting option must:

1. Allow for anonymous reporting; and
2. Be easily accessible through a clearly identifiable link on the institution's website home page.

A protocol for reporting sexual assault adopted under Education Code 51.282 must comply with this section.

Education Code 51.283(a)–(c); 19 TAC 3.7

**Reporting on
Reports**

Title IX
Coordinator

Not less than once every three months, the Title IX coordinator of a postsecondary educational institution shall submit to the institution's chief executive officer a written report on the reports received for the institution's reporting period under 19 Administrative Code 3.5, including information regarding:

1. The investigation of those reports;
2. The disposition, if any, of any disciplinary processes arising from those reports; and
3. The reports for which the institution determined not to initiate a disciplinary process, if any.

The Title IX coordinator or deputy Title IX coordinator of a postsecondary educational institution shall immediately report to the institution's chief executive officer an incident reported to the coordinator under Section 3.5 if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.

Education Code 51.253(a)–(b); 19 TAC 3.6(a)–(b)

Chief Executive
Officer

At least once annually, during each fall or spring semester, the chief executive officer of a postsecondary educational institution shall submit to the institution's governing body and post on the institution's internet website a report concerning the reports received under 19 Administrative Code 3.5. The chief executive officer report may not identify any person and must include:

1. The number of reports received under Section 3.5;
2. The number of investigations conducted as a result of those reports;
3. The disposition, if any, of any disciplinary processes arising from those reports;
4. The number of those reports for which the institution determined not to initiate a disciplinary process, if any; and
5. Any disciplinary actions taken under 19 Administrative Code 3.8.

If for any semester a postsecondary educational institution has fewer than 1,500 enrolled students, the chief executive officer of

the institution shall submit and post a report required for that semester only if more than five reports were received under ~~19 Administrative Code~~ **Section 3.5** during that semester.

Education Code 51.253(c)–(d); 19 TAC 3.6(c)–(d)

Investigations

Request Not to Investigate

If an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a postsecondary educational institution requests the institution not to investigate the alleged incident, the institution may investigate the alleged incident in a manner that complies with the confidentiality requirements under Education Code 51.291 and 19 Administrative Code 3.17. In determining whether to investigate the alleged incident, the institution shall consider:

1. The seriousness of the alleged incident;
2. Whether the institution has received other reports of sexual harassment, sexual assault, dating violence, or stalking committed by the alleged perpetrator or perpetrators;
3. Whether the alleged incident poses a risk of harm to others; and
4. Any other factors the institution determines relevant.

If a postsecondary educational institution decides not to investigate an alleged incident of sexual harassment, sexual assault, dating violence, or stalking based on the alleged victim's request not to investigate, the institution shall take any reasonable steps the institution determines necessary and consistent with the institution's policy and applicable law to protect the health and safety of the institution's community in relation to the alleged incident.

Education Code 51.285(a)–(b); 19 TAC 3.9(a)–(b)

Notice of Decision

A postsecondary educational institution shall inform an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking who requests the institution not to investigate the alleged incident of the institution's decision whether to investigate the alleged incident. *Education Code 51.285(c); 19 TAC 3.9(c)*

Confidentiality

Unless waived in writing by the person, the identity of a person described below is confidential and not subject to disclosure under the Public Information Act (PIA) and may be disclosed only to:

1. Persons employed by or under contract with the postsecondary educational institution to which the report is made who are necessary to conduct an investigation or the report or any related hearings;

2. A law enforcement officer as necessary to conduct a criminal investigation of the report;
3. A health-care provider in an emergency, as determined necessary by the institution;
4. The person or persons alleged to have perpetrated the incident, to the extent required by other law; and
5. Potential witnesses to the incident as necessary to conduct an investigation of the report and to the extent required by other law.

The protections provided by this section apply to:

1. An alleged victim;
2. A person who reports an incident to an institution;
3. A person who sought guidance from the institution concerning an incident;
4. A person who participated in the institution's investigation of an incident; or
5. A person who is alleged in a report made to an institution to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence, or stalking, if after completing an investigation, the institution determines the report to be unsubstantiated or without merit.

Education Code 51.256, .291(a), (c); 19 TAC 3.17

Retaliation
Prohibited
Employees

A postsecondary educational institution may not discipline or otherwise discriminate against an employee who in good faith makes a report as required by 19 Administrative Code 3.5 or cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee. *Education Code 51.257(a); 19 TAC 3.18*

Exception

The prohibition does not apply to an employee who:

1. Reports an incident of sexual harassment, sexual assault, dating violence, and stalking perpetrated by the employee; or
2. Cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee perpetrated an incident described by Education Code 51.252(a).

Education Code 51.257(b); 19 TAC 3.18(b)

Any Person

A person acting in good faith who reports or assists in the investigation of a report of an incident described by 19 Administrative

Code 3.5 or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident may not be subjected to any disciplinary action by the postsecondary educational institution at which the person is enrolled or employed for any violation by the person of the institution's policy or code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment. This provision does not apply to a person who perpetrates or assists in the perpetration of the incident reported under Section 3.5. *Education Code 51.254; 19 TAC 3.5(e)–(f)*

Awareness

*Orientation on
Policy*

Each postsecondary educational institution shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term of enrollment at the institution. The institution shall establish the format and content of the orientation. The orientation may be provided online and must include the statements described by 19 Administrative Code 3.4(a)(5). *Education Code 51.282(c); 19 TAC 3.4(c)*

*Prevention and
Outreach
Program*

Each postsecondary educational institution shall develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking for enrolled students and employees of the institution. The program must:

1. Address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a public awareness campaign; a victim empowerment program; primary prevention; bystander intervention; and risk reduction; and
2. Provide students information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking, including the name, office location, and contact information of the institution's Title IX coordinator, by:
 - a. Emailing the information to each student at the beginning of each semester or other academic term; and
 - b. Including the information in the institution's orientation, which may be provided online.

Education Code 51.282(d); 19 TAC 3.4(d)

Equal Access

In implementing the requirements under 19 Administrative Code Chapter 3, Subchapter A, a postsecondary educational institution shall, to the greatest extent practicable, ensure equal access for

	students enrolled at or employees of the institution who are persons with disabilities. The institution shall make reasonable efforts to consult with a disability services office of the institution, advocacy groups for people with disabilities, and other relevant stakeholders to assist the institution with complying with the institution's duties under this section. <i>Education Code 51.293; 19 TAC 3.16</i>
Memoranda of Understanding	To facilitate effective communication and coordination regarding allegations of sexual harassment, sexual assault, dating violence, and stalking at the institution, a postsecondary educational institution shall enter into one or more memoranda of understanding with an entity from one or more of the following categories: 1. Local law enforcement agencies; 2. Sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and 3. Hospitals or other medical resource providers. <i>Education Code 51.289; 19 TAC 3.13</i>
Compliance	The chief executive officer of each postsecondary educational institution shall annually certify in writing to the Coordinating Board, in October of each year, that the institution is in substantial compliance with Education Code Chapter 51, Subchapter E-2. The Coordinating Board shall make available to institutions a required template for the certification, which satisfies the requirements of this section. If the Coordinating Board determines that a postsecondary educational institution is not in substantial compliance with Subchapter E-2 and Education Code Chapter 51, Subchapter E-3, the Coordinating Board may assess an administrative penalty against the institution in an amount not to exceed \$2 million. In determining the amount of the penalty, the Coordinating Board shall consider the nature of the violation and the number of students enrolled at the institution. If the Coordinating Board assesses an administrative penalty against a postsecondary educational institution, the Coordinating Board shall provide to the institution written notice of the Coordinating Board's reasons for assessing the penalty. A postsecondary educational institution assessed an administrative penalty may appeal the penalty in the manner provided by Government Code Chapter 2001. A postsecondary educational institution may not pay the administrative penalty using state or federal money. <i>Education Code 51.258(a)–(e), .292(a)–(d); 19 TAC 3.19(a)–(e)</i>

The governing board of each institution of higher education in the state, including each college district board of trustees, shall adopt rules and regulations concerning faculty academic workloads. In adopting the rules, each institution shall recognize that classroom teaching, basic and applied research, and professional development are important elements of faculty academic workloads by giving appropriate weight to each activity when determining the standards for faculty academic workloads. An institution may give the same or different weight to each activity and to other activities recognized by the institution as important elements of faculty academic workloads. ~~The established rules and regulations of each institution shall be included in the operating budgets of each institution.~~ *Education Code 51.402(b)*

Training Programs	A state agency, including a college district, may use public funds to provide training and education for its administrators and employees. The training or education must be related to the duties or prospective duties of the administrator or employee. <i>Gov't Code 656.044</i>
Required Training	A state agency, including a college district, may require an administrator or employee of the agency to attend, as all or part of the administrator's or employee's duties, a training or education program if the training or education is related to the administrator's or employee's duties or prospective duties. <i>Gov't Code 656.045</i>
Program Content	A state agency's training and educational program may include: 1. Preparing for technological and legal developments; 2. Increasing work capabilities; 3. Increasing the number of qualified employees in areas designated by institutions of higher education as having an acute faculty shortage; and 4. Increasing the competence of state employees. <i>Gov't Code 656.046</i>
<i>Employment Discrimination Training</i>	Each state agency, including each college district, shall provide to employees of the agency an employment discrimination training program. The training program must provide the employee with information regarding the agency's policies and procedures relating to employment discrimination, including employment discrimination involving sexual harassment. <i>Labor Code 21.010(a)–(b)</i>
Standard Training	Each state agency shall provide its employees with standard employment discrimination training no later than the 30th day after the date the employee is hired by the agency, with supplemental training every two years thereafter. The Texas Workforce Commission (TWC) shall develop or approve the materials for use by state agencies in providing standard employment discrimination training. The minimum standards for the content of standard employment discrimination training shall include, but not be limited to, requiring participants to: 1. Identify an unlawful employment practice according to the Civil Rights Act; 2. Apply knowledge of the applicable laws by correctly identifying whether individual case studies would be considered violations; 3. Identify the protected classes under federal and state law;

4. List a complainant's rights and remedies;
5. Identify the agency personnel to whom a complaint shall be addressed; and
6. Describe the general stages involved in processing a complaint.

Labor Code 21.010(c)–(d); 40 TAC 819.24

Compliance
Training

State agencies receiving three or more complaints with merit within a fiscal year shall provide compliance employment discrimination training. The training may be provided by TWC or by another entity or person approved by TWC.

TWC Civil Rights Division's (CRD) minimum standards for the content of compliance employment discrimination training shall include, but not be limited to, requiring participants to:

1. Distinguish between disparate treatment and disparate impact;
2. Identify the elements of a complaint involving disparate treatment and disparate impact;
3. Explain the defenses available to an employer resulting from both statute and case law involving disparate treatment and disparate impact;
4. Explain the burden of proof requirements for disparate treatment and disparate impact;
5. Identify criteria for accurately measuring compliance with applicable laws;
6. Define the different types of employment discrimination;
7. Identify the appropriate action to be taken in a situation involving a potential case of employment discrimination; and
8. Describe strategies for prevention of employment discrimination.

The term "complaint with merit" shall mean a complaint that is resolved, either by a cause finding or through withdrawal of the complaint with a remedy favorable to the complainant, such as a negotiated settlement, withdrawal with benefits, or conciliation.

40 TAC 819.25

Training
Delivery

The minimum standards for the delivery of standard and compliance employment discrimination training shall include, but not be limited to:

1. A determination of the effectiveness of the training;
2. The use of training that takes advantage of technological advances, such as videos, CDs, and web-based delivery systems; and
3. The documentation of training that shall be provided to CRD, including the date the training was provided, description of the training program used, names of participants, and the agency contact person. Web-based training records may be retained electronically.

In addition to the minimum standards set forth above, the delivery of compliance employment discrimination training shall be highly interactive to ensure the engagement of the trainee.

40 TAC 819.26

Verification of
Attendance

Each state agency shall require an employee of the agency who attends a training program required by this provision to sign a statement verifying the employee's attendance at the training program. The agency shall file the statement in the employee's personnel file. *Labor Code 21.010(e)*

*Purchasing and
Contract
Management
Training*

Provided by the
Comptroller

The comptroller shall develop training programs provided by the comptroller under Government Code Chapter 656, Subchapter C to meet the needs of state agencies.

Each year a state agency shall estimate the number of employees requiring purchasing or contract management training and report the anticipated training needs of the state agency to the comptroller in the manner and form prescribed by the comptroller.

On an annual basis the comptroller shall assess the number of employees requiring purchasing or contract management training and shall maintain a regular schedule of classes to accommodate that number.

The comptroller may assess a fee for a training program, including continuing education and certification, in an amount sufficient to recover the costs incurred by the comptroller to provide the training program.

Gov't Code 656.054

Provided by the
College District

A state agency, in consultation with the comptroller, may develop agency-specific purchasing and contract management training programs to be administered by the agency to the agency's employees instead of or as a supplement to training programs developed by the comptroller under Government Code Chapter 656, Subchapter C.

An employee who participates in an agency-specific training program under this section remains subject to any other applicable certification requirements established for training programs under ~~this subchapter~~ **Subchapter C**, including written or oral examinations administered by the comptroller.

Gov't Code 656.055

*Training in
Contract
Negotiation for
Purchases of
Information
Resources
Technologies*

"Information resources technologies" means data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.

The Department of Information Resources (DIR) with the cooperation of the comptroller and other appropriate state agencies, shall develop and implement a program to train state agency personnel in effectively negotiating contracts for the purchase of information resources technologies.

DIR shall make the training available to state agency personnel who are directly or indirectly involved in contract negotiations, such as senior or operational management, purchasers, users of the purchased technologies, and personnel with relevant technical, legal, or financial knowledge. State agency personnel directly involved in contract negotiations for the purchase of information resources technologies shall complete the training developed by the department.

Gov't Code 656.050(a)–(b), 2054.003(8)

*Training and
Certification of
Purchasing
Personnel and
Vendors*

The comptroller shall establish and administer a system of training, continuing education, and certification for state agency purchasing personnel. The training and continuing education for state agency purchasing personnel must include ethics training. The comptroller may establish and offer appropriate training to vendors on a cost recovery basis.

Notwithstanding Government Code 656.051(i), all state agency purchasing personnel, including agencies exempted from the purchasing authority of the comptroller, must receive the training and continuing education to the extent required by the comptroller. A state agency employee who is required to receive the training may not participate in purchases by the employing agency unless the employee has received the required training or received equivalent training from a national association recognized by the comptroller.

The comptroller may provide training, continuing education, and certification under this section to purchasing personnel employed by a political subdivision or other public entity of the state. Political subdivision purchasing personnel may receive, but are not required

to receive, the training, continuing education, or certification provided under this section.

The comptroller shall certify a state agency employee as a state agency purchaser when the employee has completed the training required by this section or as prescribed by rule and passed a written examination. The comptroller shall require a reasonable number of hours of continuing education to maintain certification.

Gov't Code 656.051(a), (c)–(d), (g)–(h)

Program Rules

A state agency shall adopt rules relating to:

1. The eligibility of the agency's administrators and employees for training and education supported by the agency; and
2. The obligations assumed by the administrators and employees on receiving the training and education.

A state agency shall adopt rules requiring that before an administrator or employee of the agency may be reimbursed under Government Code 656.047(b), the executive head of the agency must authorize the tuition reimbursement payment.

Gov't Code 656.048

Payment of Expenses

Except as provided by Government Code 656.047 or other law, a state agency may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

For an administrator or employee of a state agency who seeks reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education, the agency may only pay the tuition expenses for a program course successfully completed by the administrator or employee at an accredited institution of higher education.

Gov't Code 656.047(a)–(b)

Report

A state agency that spends more than \$5,000 in a state fiscal year for a training or education program for any individual administrator or employee shall, not later than August 31 of that year, submit to the Legislative Budget Board a report including:

1. A list of the administrators and employees participating in a training or education program;
2. The amount spent on each administrator or employee; and

3. The certification earned by each administrator or employee through the training or education program.

Gov't Code 656.047(c)

Contracts for
Training or
Education

A state agency may contract with another state, local, or federal department, agency, or institution, including a state-supported college or university, to train or educate its administrators and employees or may join in presenting a training or educational program.

Gov't Code 656.049

Cybersecurity
Training

Each state agency, including each college district, shall identify state employees who use a computer to complete at least 25 percent of the employees' required duties. At least once each year, an employee identified by the state agency and each elected or appointed officer of the agency shall complete a cybersecurity training program certified under Government Code 2054.519.

A state agency may select the most appropriate cybersecurity training program certified under Government Code 2054.519 for employees of the state agency. The executive head of each state agency shall verify completion of a cybersecurity training program by employees of the state agency in a manner specified by DIR.

The executive head of each state agency shall periodically require an internal review of the agency to ensure compliance with this section.

Gov't Code 2054.5191(a), (c)–(d) [See also BBD]

Exception

The requirements do not apply to employees and officials who have been:

1. **Granted military leave;**
2. **Granted leave under the federal Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq.;**
3. **Granted leave related to a sickness or disability covered by workers' compensation benefits, if that employee no longer has access to the state agency's database and systems; or**
4. **Granted any other type of extended leave or authorization to work from an alternative work site if that employee no longer has access to the state agency's database and systems.**

Gov't Code 2054.5191(f)

Note: For more information on cybersecurity training, including a list of certified cybersecurity training programs and compliance reporting requirements, see DIR's website at [Certified Cybersecurity Training Programs](#).¹

**Faculty Members'
Use of English**

The governing board of each institution of higher education, including each college district, shall establish a program or a short course the purpose of which is to assist faculty members whose primary language is not English to become proficient in the use of English and ensure that courses offered for credit at the institution are taught in the English language and that all faculty members are proficient in the use of the English language, as determined by a satisfactory grade on the "Test of Spoken English" of the Educational Testing Service or a similar test approved by the board.

A faculty member may use a foreign language to conduct foreign language courses designed to be taught in a foreign language. This section does not prohibit a faculty member from providing individual assistance during course instruction to a non-English-speaking student in the native language of the student.

The cost of such English proficiency course as determined by the Coordinating Board shall be paid by the faculty member lacking proficiency in English. A faculty member must take the course until deemed proficient in English by his or her supervisor. The cost will be deducted from said faculty member's salary.

Education Code 51.917

Note: For training regarding child abuse, see DHC.

¹ Certified Cybersecurity Training Programs: <https://dir.texas.gov/View-About-DIR/Information-Security/Pages/Content.aspx?id=154>



PRESIDENT'S OFFICE

MINUTE ORDER

To: Board of Trustees
From: Dr. Warren Nichols, President
Date: January 24, 2022
Subject: Agenda Item for COM Board of Trustees

AGENDA ITEM DESCRIPTION:

Approval of Contract 22-12 for the purchase of Network Hardware, Licensing, Configuration, and Installation Services for the Industrial Careers Building (ICB) Datacenter.

FUNDING SOURCE:
COM 2018 Bond

PURPOSE:
Software licensing, and hardware for the Industrial Careers Building (ICB) datacenter network infrastructure. The hardware will serve as the central switch fabric of the campus, connecting all buildings and locations to the internal production environment and the internet.

PROPOSED MOTION:

"I move the Board of Trustees approve the purchase of Network Hardware, Licensing, Configuration, and Installation Services in an amount not to exceed \$210,000.00."

BACKGROUND

In accordance with the 2018 Bond referendum, the College is constructing an Industrial Careers Building (ICB), scheduled for completion in 2022. The 2018 Bond also includes demolition of the Technical Vocational Building (TVB). A new datacenter will be constructed in the ICB to replace the current one that is in the TVB. The Bond also includes a new fiber backbone connecting the buildings on the main campus. The network equipment in this proposal will support the fiber backbone, increasing the throughput between the datacenter and buildings from the current 1GB to 40GB. ITS worked with Cisco to solicit quotes from DIR contractors. DataVox and NetSync responded with proposals that include hardware, licenses, and services. ITS recommends DataVox for this procurement because of their proven technical expertise, successful working relationship history, and Cisco preferred partner pricing.

DataVox is an authorized vendor under the Department of Information Resources (DIR). Therefore, this is considered a competitive procurement under Texas Education Code 44.031.

ATTACHMENTS

1. DataVox Quote
2. NetSync quote



6650 W. Sam Houston Pkwy S, Houston, TX 77072

t. (713)881-5300 www.datavox.net

Quote # DVXQ22330

Date Jan 11, 2022

Expiration 30 Days

Prepared for:

College of the Mainland

1200 Amburn Rd.
Texas City, TX 77591
USA

Ship to Information:

College of the Mainland

1200 Amburn Rd.
Texas City, TX 77591
USA

Ron Levick

Email rlevick@com.edu

Phone

attn: Ron Levick

Customer ID #

Project #

DataVox Contact:

Account Manager: Thang Pham

Phone 281-881-7068

Email thangp@datavox.net

Prepared by: Thang Pham

Phone 281-881-7068

Email thangp@datavox.net



Contract Vehicle:

Texas DIR

DIR Vendor Number:

DataVox Texas DIR Vendor Number **176-025-1479-000**

DIR Contract Number:

DIR-TSO-4167

This contract information must appear on the purchase order

College of Mainland - Server Room Catalyst Option

Part #	Description	Contract#	Service	Qty	Unit Price	Ext. Price
DC Core Switches						
N9K-C93180YC-FX-24	Nexus 9300-FX w/24p 1/10/25G & 6p 40/100G	DIR-TSO-4167	---	1	\$6,643.08	\$6,643.08
CON-SNT-N9K-C931	SNTC-8X5XNBD Limited orderability	DIR-TSO-4167	60	1	\$3,263.50	\$3,263.50
MODE-NXOS	Dummy PID for mode selection	DIR-TSO-4167	---	1	\$0.00	\$0.00

Part #	Description	Contract#	Service	Qty	Unit Price	Ext. Price
NXK-ACC-KIT-1RU	Nexus 3K/9K Fixed Accessory Kit, 1RU front and rear removal	DIR-TSO-4167	---	1	\$0.00	\$0.00
NXK-AF-PE	Dummy PID for Airflow Selection Port-side Exhaust	DIR-TSO-4167	---	1	\$0.00	\$0.00
NXA-FAN-30CFM-F	Nexus Fan, 30CFM, port side exhaust airflow	DIR-TSO-4167	---	4	\$0.00	\$0.00
NXA-PAC-500W-PE	Nexus NEBs AC 500W PSU - Port Side Exhaust	DIR-TSO-4167	---	2	\$0.00	\$0.00
CAB-9K12A-NA	Power Cord, 125VAC 13A NEMA 5-15 Plug, North America	DIR-TSO-4167	---	2	\$0.00	\$0.00
C1-SUBS-OPTOUT	OPT OUT FOR "Default" DCN Subscription Selection	DIR-TSO-4167	---	1	\$0.00	\$0.00
NXOS-ES-XF	NX-OS Essentials license for Nexus 9300 (10G+) Platforms	DIR-TSO-4167	---	1	\$4,056.68	\$4,056.68
CON-ECMU-N9SWESXF	SWSS UPGRADES NX-OS Essentials license for Nexus 9300	DIR-TSO-4167	60	1	\$2,083.15	\$2,083.15
NXOS-9.3.8	Nexus 9500, 9300, 3000 Base NX-OS Software Rel 9.3.8	DIR-TSO-4167	---	1	\$0.00	\$0.00
Campus Fiber Aggregation Core						
C9500-32C-A	Catalyst 9500 32-port 100G only, Advantage	DIR-TSO-4167	---	2	\$9,688.80	\$19,377.60
CON-SSSNT-C95AC032	SOLN SUPP 8X5XNBD Catalyst 9500 32-port 100G only, Advanta	DIR-TSO-4167	60	2	\$8,109.95	\$16,219.90
C9K-T2-FANTRAY	Catalyst 9500 Type 5 front to back cooling Fan	DIR-TSO-4167	---	10	\$0.00	\$0.00
C9500-NW-A	C9500 Network Stack, Advantage	DIR-TSO-4167	---	2	\$0.00	\$0.00
SC9500HUK9-173	Cisco Catalyst 9500H XE.17.3 UNIVERSAL	DIR-TSO-4167	---	2	\$0.00	\$0.00
C9K-F1-SSD-240G	Cisco pluggable SSD storage	DIR-TSO-4167	---	2	\$871.03	\$1,742.06
C9K-PWR-1600WAC-R	Catalyst 9500 1600W Power Supply	DIR-TSO-4167	---	2	\$0.00	\$0.00
C9K-PWR-1600WACR/2	1600W AC Config 4 Power Supply front to back cooling	DIR-TSO-4167	---	2	\$871.03	\$1,742.06
CAB-TA-NA	North America AC Type A Power Cable	DIR-TSO-4167	---	4	\$0.00	\$0.00
C9500-DNA-32C-A	C9500 DNA Advantage, Term License	DIR-TSO-4167	---	2	\$0.00	\$0.00
CON-SSTCM-C9524QA	SOLN SUPP SW SUBC9500 DNA Advantage	DIR-TSO-4167	60	2	\$1,845.25	\$3,690.50
C9500-DNA-A-5Y	DNA Advantage 5 Year License	DIR-TSO-4167	60	2	\$5,856.25	\$11,712.50
PI-LFAS-T	Prime Infrastructure Lifecycle & Assurance Term - Smart Lic	DIR-TSO-4167	---	6	\$0.00	\$0.00
PI-LFAS-AP-T-5Y	PI Dev Lic for Lifecycle & Assurance Term 5Y	DIR-TSO-4167	60	6	\$0.00	\$0.00
NETWORK-PNP-LIC	Network Plug-n-Play Connect for zero-touch device deployment	DIR-TSO-4167	---	2	\$0.00	\$0.00
C9300-48P-E	Catalyst 9300 48-port PoE+, Network Essentials	DIR-TSO-4167	---	8	\$2,932.00	\$23,456.00
CON-SSSNT-C93004PE	SOLN SUPP 8X5XNBD Catalyst 9300 48-port PoE+, Network Esse	DIR-TSO-4167	60	8	\$2,504.87	\$20,038.96
C9300-NW-E-48	C9300 Network Essentials, 48-port license	DIR-TSO-4167	---	8	\$0.00	\$0.00

Part #	Description	Contract#	Service	Qty	Unit Price	Ext. Price
SC9300UK9-175	Cisco Catalyst 9300 XE 17.5 UNIVERSAL UNIVERSAL	DIR-TSO-4167	---	8	\$0.00	\$0.00
PWR-C1-715WAC-P	715W AC 80+ platinum Config 1 Power Supply	DIR-TSO-4167	---	8	\$0.00	\$0.00
C9300-SPS-NONE	No Secondary Power Supply Selected	DIR-TSO-4167	---	8	\$0.00	\$0.00
CAB-TA-NA	North America AC Type A Power Cable	DIR-TSO-4167	---	8	\$0.00	\$0.00
C9300-SSD-NONE	No SSD Card Selected	DIR-TSO-4167	---	8	\$0.00	\$0.00
STACK-T1-50CM	50CM Type 1 Stacking Cable	DIR-TSO-4167	---	8	\$29.04	\$232.32
CAB-SPWR-30CM	Catalyst Stack Power Cable 30 CM	DIR-TSO-4167	---	8	\$27.58	\$220.64
PWR-C1-BLANK	Config 1 Power Supply Blank	DIR-TSO-4167	---	8	\$0.00	\$0.00
C9300-DNA-E-48	C9300 DNA Essentials, 48-Port Term Licenses	DIR-TSO-4167	---	8	\$0.00	\$0.00
C9300-DNA-E-48-3Y	C9300 DNA Essentials, 48-port - 3 Year Term License	DIR-TSO-4167	36	8	\$325.19	\$2,601.52
CON-SSTCM-C93E48	SOLN SUPP SW SUBC9300 DNA Essentials	DIR-TSO-4167	60	8	\$170.80	\$1,366.40
C9300-NM-2Y	Catalyst 9300 2 x 25GE Network Module	DIR-TSO-4167	---	8	\$743.57	\$5,948.56
NETWORK-PNP-LIC	Network Plug-n-Play Connect for zero-touch device deployment	DIR-TSO-4167	---	8	\$0.00	\$0.00
QSFP-100G-AOC1M=	100GBASE QSFP Active Optical Cable, 1m	DIR-TSO-4167	---	11	\$665.62	\$7,321.82
SFP-10G-SR=	10GBASE-SR SFP Module	DIR-TSO-4167	---	16	\$299.58	\$4,793.28
QSFP-40G-LR4-S=	QSFP 40GBASE-LR4 Trnscvr Mod, LC, 10km, Enterprise-Class	DIR-TSO-4167	---	20	\$3,084.41	\$61,688.20
DVX-EE-PROSVC-STD	DataVox Professional Services	DIR-TSO-4167			\$11,250.00	\$11,250.00
					SubTotal	\$209,448.73
					Tax	\$0.00
					Total	\$209,448.73

Purchase Notes

- A 15% restocking fee will be applied to all returned equipment. Custom built designs and configurations may not be returnable.

Acceptance of Proposal

When (but only when) signed by Customer shall this be a binding, legal contract. The prices, specifications, and conditions in this quote are satisfactory and are hereby accepted in their entirety. Customer hereby agrees to purchase the equipment and, if applicable, authorizes DataVox to perform the work and provide the materials specified, and payment will be made as outlined above. Any changes in the equipment or installation may result in a change in the price.

THIS QUOTE, WHEN SIGNED BY CUSTOMER SHALL BE GOVERNED BY THE TERMS AND CONDITIONS FOUND AT http://www.datavox.net/DataVox_Standard_Terms_and_Conditions.pdf. THERE ARE NO OTHER AGREEMENTS OR WARRANTIES, ORAL OR WRITTEN, EXCEPT AS EXPRESSLY STATED IN THIS DOCUMENT. THIS AGREEMENT CANNOT BE MODIFIED EXCEPT IN WRITING SIGNED BY BOTH PARTIES. Customer acknowledges having read and understood all of the terms and conditions printed herein as well as those found in the online document and acknowledges receipt of a complete executed copy of this quote.

(Printed Name)

(Signature)

(Date)

Quote #:	AAAQ353329-04
Date:	01/13/2022
Valid for:	30 Days

Sell To Contact	Inside Sales	Account Manager
College of the Mainland ahensley@com.edu 409-933-8509	Lori Endsley lendsley@netsync.com	Monica Johnson m.johnson@netsync.com

Please send purchase order to: PO@netsync.com

Line #	Part	Description	Qty	Unit Price	Ext Price
1.0	N9K-C93180YC-FX-24	Nexus 9300-FX w/24p 1/10/25G & 6p 40/100G	1	7,873.28	7,873.28
1.1.0	CON-SNT-N9K-C931	SNTC-8X5XNBD Limited orderability Duration: 5.00 Years	1	3,370.50	3,370.50
1.2.0	MODE-NXOS	Dummy PID for mode selection	1	0.00	0.00
1.3.0	NXOS-9.3.2	Nexus 9500, 9300, 3000 Base NX-OS Software Rel 9.3.2	1	0.00	0.00
1.4.0	NXK-ACC-KIT-1RU	Nexus 3K/9K Fixed Accessory Kit, 1RU front and rear removal	1	0.00	0.00
1.5.0	NXK-AF-PE	Dummy PID for Airflow Selection Port-side Exhaust	1	0.00	0.00
1.6.0	NXA-FAN-30CFM-F	Nexus Fan, 30CFM, port side exhaust airflow	4	0.00	0.00
1.7.0	NXA-PAC-500W-PE	Nexus NEBs AC 500W PSU - Port Side Exhaust	2	0.00	0.00
1.8.0	CAB-9K12A-NA	Power Cord, 125VAC 13A NEMA 5-15 Plug, North America	2	0.00	0.00
1.9.0	C1-SUBS-OPTOUT	OPT OUT FOR "Default" DCN Subscription Selection	1	0.00	0.00
1.10.0	NXOS-ES-XF	NX-OS Essentials license for Nexus 9300 (10G+) Platforms	1	4,807.92	4,807.92
1.10.1.0	CON-ECMU-N9SWESXF	SWSS UPGRADES NX-OS Essentials license for Nexus 9300 Duration: 5.00 Years	1	2,151.40	2,151.40
2.0	N9K-C9348GC-FXP	Nexus 9300 with 48p 100M/1GT, 4p 10/25G & 2p 40/100G QSFP28	8	5,057.93	40,463.44
2.1.0	CON-SNT-N9348F	SNTC-8X5XNBD Nexus 9300 with 48p 100M/1G, 4p 10/25G S Duration: 5.00 Years	8	2,255.30	18,042.40
2.2.0	MODE-NXOS	Dummy PID for mode selection	8	0.00	0.00
2.3.0	NXOS-9.3.3	Nexus 9500, 9300, 3000 Base NX-OS Software Rel 9.3.3	8	0.00	0.00
2.4.0	NXK-ACC-KIT-1RU	Nexus 3K/9K Fixed Accessory Kit, 1RU front and rear removal	8	0.00	0.00
2.5.0	CAB-9K12A-NA	Power Cord, 125VAC 13A NEMA 5-15 Plug, North America	16	0.00	0.00
2.6.0	NXOS-ES-GF	NX-OS Essentials SW license for a 1G Nexus 9K	8	1,849.20	14,793.60
2.6.1.0	CON-ECMU-N9SWESGF	SWSS UPGRADES NX-OS Essentials SW Duration: 5.00 Years	8	878.80	7,030.40
2.7.0	NXK-AF-PE	Dummy PID for Airflow Selection Port-side Exhaust	8	0.00	0.00
2.8.0	NXA-PAC-350W-PE	Nexus NEBs AC 350W PSU - Port Side Exhaust	16	0.00	0.00
2.9.0	NXA-FAN-30CFM-F	Nexus Fan, 30CFM, port side exhaust airflow	24	0.00	0.00
2.10.0	C1-SUBS-OPTOUT	OPT OUT FOR "Default" DCN Subscription Selection	8	0.00	0.00
3.0	C9500-32C-A	Catalyst 9500 32-port 100G only, Advantage	2	11,483.01	22,966.02
3.1.0	CON-SSSNT-C95AC032	SOLN SUPP 8X5XNBD Catalyst 9500 32-port 100G only, Advanta Duration: 5.00 Years	2	8,375.80	16,751.60
3.2.0	C9K-T2-FANTRAY	Catalyst 9500 Type 5 front to back cooling Fan	10	0.00	0.00
3.3.0	C9500-NW-A	C9500 Network Stack, Advantage	2	0.00	0.00
3.4.0	SC9500HUK9-173	Cisco Catalyst 9500H XE.17.3 UNIVERSAL	2	0.00	0.00
3.5.0	C9K-F1-SSD-240G	Cisco pluggable SSD storage	2	1,032.33	2,064.66

Quote #:	AAAQ353329-04
Date:	01/13/2022
Valid for:	30 Days

Line #	Part	Description	Qty	Unit Price	Ext Price
3.6.0	C9K-PWR-1600WAC-R	Catalyst 9500 1600W Power Supply	2	0.00	0.00
3.7.0	C9K-PWR-1600WACR/2	1600W AC Config 4 Power Supply front to back cooling	2	1,032.33	2,064.66
3.8.0	CAB-TA-NA	North America AC Type A Power Cable	4	0.00	0.00
3.9.0	C9500-DNA-32C-A	C9500 DNA Advantage, Term License	2	0.00	0.00
3.9.1.0	CON-SSTCM-C9524QA	SOLN SUPP SW SUBC9500 DNA Advantage Duration: 5.00 Years	2	1,118.20	2,236.40
3.9.2.0	C9500-DNA-A-5Y	DNA Advantage 5 Year License	2	6,940.73	13,881.46
3.10.0	PI-LFAS-T	Prime Infrastructure Lifecycle & Assurance Term - Smart Lic	6	0.00	0.00
3.10.1.0	PI-LFAS-AP-T-5Y	PI Dev Lic for Lifecycle & Assurance Term 5Y	6	0.00	0.00
3.11.0	NETWORK-PNP-LIC	Network Plug-n-Play Connect for zero-touch device deployment	2	0.00	0.00
4.0	QSFP-100G-AOC1M=	100GBASE QSFP Active Optical Cable, 1m	4	788.88	3,155.52
5.0	SFP-10G-SR=	10GBASE-SR SFP Module	16	355.05	5,680.80
6.0	QSFP-40G-LR4=	QSFP 40GBASE-LR4 OTN Transceiver, LC, 10KM	20	5,400.32	108,006.40

Notes

Nexus

DIR-TSO-4167

Total	275,340.46
Tax/Vat	0.00
Shipping	0.00
Grand Total USD	275,340.46



PRESIDENT'S OFFICE

MINUTE ORDER

To: Board of Trustees
From: Dr. Warren Nichols, President
Date: January 18, 2022
Subject: 2022-2023 Property/Casualty Insurance Renewals

AGENDA ITEM DESCRIPTION:

Consideration of and possible approval of the 2022-2023 Property/Casualty Insurance Renewals.

PURPOSE

To provide sufficient property and liability insurance for all appropriate properties and areas of liability.

FUNDING SOURCE:

2021-2022 Budget

PROPOSED MOTION:

Suggested motion: "I move the Board of Trustees approve the 2022-2023 Property and Casualty Insurance Renewals as stated in the 2022-2023 RWL Group Proposal Analysis for an amount not to exceed \$2,000,000.00 to be paid from FY21-22 operating budget."

BACKGROUND

In February of 2020, the Board approved a contract award to McGriff, TASB, and Texas First Insurance (formerly Rust-Ewing) based on results of a Request for Proposal for property and liability insurance. The College's appointed Risk Manager coordinates with the College's insurance consultant, RWL Group, to obtain, prepare and submit a schedule of annual property and casualty insurance renewals for all appropriate properties and areas of liability. The recommended coverage from McGriff, TASB, and Texas First Insurance is indicated on the attached proposal analyses for the 22-23 renewal period.

ATTACHMENTS

1. 2022-2023 RWL Group Explanation & Recommendation Letter to the College of the Mainland
2. 2022-2023 RWL Group Proposal Analysis for Renewal

Phone: 972-907-9095; 512-904-0048
E-mail: rwlgroup@rwlgroup.com
Internet: www.rwlgroup.com

January 18, 2022

Ms. Trudy Trochesset
College of the Mainland
1200 Amburn Road
Texas City, TX 77591

Re: Property and Casualty Renewal Analysis – February 28th and March 1st Renewals (2022)

Dear Trudy:

The attached proposal analysis summarizes the expiring versus renewal coverages with respect to each applicable agent. The overall renewal is consistent with current industry market conditions and the underwriting merits of the College of the Mainland. We have the following specific comments:

TEXAS FIRST INSURANCE —

The law enforcement liability renewal has increased by \$628. The reason for the increase is because of customary inflationary factors. The estimated NFIP premium is up by approximately \$9,577. This is the result of additional locations being insured under NFIP (\$6,799) and increases in rating trends (\$2,778).

TASB—

The automobile liability, auto physical damage, professional liability, commercial general liability, and cyber liability premiums have been increased by \$1,343. This increase is specifically attributable to the increase in premium for cyber coverage, \$500, and the remaining \$843 due to the funding plan for the overall health of the pool.

MCGRIFF SEIBELS & WILLIAMS—

With respect to all coverage lines, except property, the premium has decreased by approximately \$1,500. The decrease in premiums is primarily attributable to the terrorism and boiler and machinery lines. More favorable pricing was found with AXA/XL for the boiler and machinery, and London was able to improve its pricing for the terrorism. The general liability for leased locations is actually up by approximately 8.5%, which is in line with current market trends.

With reference to the property insurance and based on insuring the coverage for full total insured values (TIV) of \$149,062,347 the premium has increased from last year by \$89,769 or approximately 6.2% even though the TIV is lower than last year by more than \$5,000,000. The increase in premium for the property line is primarily as a result of an increase in rate. However, the increase is well within the current property market trends. Capacity issues continue to drive rate increases especially in Tier 1 locations.

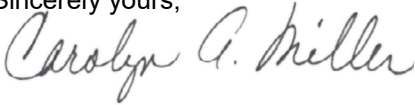
Historically, the College of the Mainland has insured its buildings and personal property at a limit consistent with total insured values. RWL Group is recommending that the College continue to insure its property at a limit equal to the total insured values. The reason for making this recommendation is because the buildings and personal property are relatively in close proximity, thus resulting in a concentrated exposure. The concentrated exposure lends to the potential of catastrophic damages resulting from a single loss occurrence; i.e., hurricane, tornado, or miscellaneous perils.

Ms. Trudy Trochesset
Page Two
January 18, 2022

It is RWL Group's recommendation that all coverages outlined in the exhibits be approved by the Board for the renewal in amounts shown.

Thank you for the opportunity to be of service to the College of the Mainland.

Sincerely yours,

A handwritten signature in cursive script that reads "Carolyn A. Miller".

Carolyn A. Miller, CPCU
President/Senior Consultant

Attachments

c: Sonja Blinka
Clen Burton

COLLEGE OF THE MAINLAND
PROPOSAL ANALYSIS (2022)

TEXAS FIRST INSURANCE

	RENEWAL					EXPIRING			
Insurer	Line	Limits	Deductibles	Premiums	Insurer	Line	Limits	Deductibles	Premiums
Allied World Indian Harbor	LEL	\$2M Per Claim	\$5K Per Claim	\$12,300	Indian Harbor	LEL	\$2,000,000	\$5,000	\$11,672
Various	NFIP	Various	Various	\$65,596	Various	NFIP	Various	Various	\$56,019
			PREMIUM TOTALS:	\$77,896				PREMIUM TOTALS:	\$67,691

TASB

	RENEWAL					EXPIRING			
Insurer	Line	Limits	Deductibles	Premiums	Insurer	Line	Limits	Deductibles	Premiums
TASB	Auto Liability	\$1M	\$1K	\$9,201	TASB	Auto Liability	\$1,000,000	\$1,000	\$7,998
TASB	Auto Physical Damage	ACV	\$1K	\$5,528	TASB	Auto Physical Damage	ACV	\$1,000	\$4,273
TASB	Professional Liability	\$1M	\$100K	\$55,175	TASB	Professional Liability and EPL	\$1,000,000	\$100,000	\$56,790
TASB	General Liability	\$1M	\$0	Included in PL	TASB	General Liability and EBL	\$1,000,000	\$0	Included in PL
TASB	Cyber Liability	\$250,000	\$0	\$3,000	TASB	Cyber Liability	\$250,000	\$0	\$2,500
			PREMIUM TOTALS:	\$72,904				PREMIUM TOTALS:	\$71,561

MCGRIFF

	RENEWAL				EXPIRING			
Insurer	Line	Limits	Deductibles	Premiums	Limits	Deductibles	Premiums	Comments
Lloyds of London	Terrorism	\$100,000,000	\$10,000	\$16,163	\$100,000,000	\$10,000	\$16,239	
AXA/XL (CNA Expiring)	Boiler & Machinery	\$149,062,347	\$10,000	\$8,273	\$154,139,234	\$10,000	\$10,321	
Travelers	Crime	\$500K	\$5,000	\$6,647	\$500,000	\$5,000	\$6,647	
Burlington	General Liability	\$1,000,000	\$1,000	\$7,904	\$1,000,000	\$1,000	\$7,283	• Leased locations
			PREMIUM SUB-TOTAL:	\$38,987		PREMIUM SUB-TOTAL:	\$40,490	
Various Insurers	Property	Per Schedule \$149,062,347 \$10M Flood \$10M EQ \$1M Tuition Fees	\$10K AOP \$25K EQ 1% NS, Min \$100K \$250K Flood Except— No Coverage SFHA	\$1,542,918	Per Schedule \$154,139,234 \$10M Flood \$10M EQ \$1M Tuition Fees	\$10K All Perils Except \$25K EQ 1% NS, Min \$100K, all other wind \$100K \$250K Flood SFHA Max NFIP Limits	\$1,453,149	
			PROPERTY PREMIUM TOTAL:	\$1,542,918		PROPERTY PREMIUM TOTAL:	\$1,453,149	
			PREMIUM TOTAL:	\$1,581,905		PREMIUM TOTAL:	\$1,493,639	
	TOTAL RENEWAL PREMIUM: \$1,732,705				TOTAL EXPIRING PREMIUM: \$1,632,891			

Monthly Financial Report

Cash Situation

- Cash balance at the end of month: \$19.2 million
- Minimum required cash : \$ 7.1 million
- Excess cash above minimum: \$12.1 million

Unaudited Operations Year to Date

- Revenues: Budget: \$34.5 million
Actual: \$14.9 million
- Expense: Budget: \$34.5 million
Actual: \$10.9 million
(32% Spent at 33% of year)



MINUTE ORDER

To: Board of Trustees
From: Dr. Warren Nichols, President
Date: January 12, 2022
Subject: Monthly Financial Reports

AGENDA ITEM DESCRIPTION:

Consideration of and possible acceptance of the November 2021 Financial Reports.

PURPOSE

To report to the Board of Trustees the year-to-date revenues and expenses for the college, comparison of revenues and expenses to budget.

FUNDING SOURCE:

N/A

PROPOSED MOTION:

Suggested motion: "I move the Board of Trustees accept the November 2021 Financial Reports."

BACKGROUND

The investment officer shall prepare and submit to the Board a written report of investment transactions for all funds covered by the PFIA under Education Code 51.0032 and Government Code 2256.023.

In accordance with COM policy CDA (LOCAL) – Periodic financial reports shall be submitted to the Board outlining the progress of the budget to that date and reporting on the status of all District funds and District accounts.

ATTACHMENTS

1. November 2021 Revenue & Expense Summary
2. November 2021 Expense by Division Report

Unrestricted Fund (Unaudited)

Summary of Revenue

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
Operating revenue						
Tuition-credit	(3,680,003)	(4,127,440)	(447,437)	89%	(3,558,349)	(121,654)
Tuition-non-credit	(212,018)	(1,044,100)	(832,082)	20%	(155,264)	(56,754)
Exemptions and waivers	1,115,120	1,108,300	(6,820)	101%	1,132,269	(17,148)
Registration fees	(1,684,346)	(1,789,500)	(105,154)	94%	(1,621,192)	(63,154)
Other fees	(44,804)	(137,000)	(92,196)	33%	(45,412)	608
Grant revenue	(91,542)	(66,000)	25,542	139%	(29,998)	(61,543)
Sales and service revenue	(24,421)	(432,400)	(407,979)	6%	(524)	(23,897)
Miscellaneous revenue	(21,282)	(109,100)	(87,818)	20%	(68,522)	47,240
TPEG transfer in/out	0	202,500	202,500	0%	0	0
<u>Totals for Operating revenue</u>	<u>(4,643,295)</u>	<u>(6,394,740)</u>	<u>(1,751,445)</u>	<u>73%</u>	<u>(4,346,993)</u>	<u>(296,302)</u>
Non-operating revenue						
State appropriation-Academic	(2,227,459)	(6,649,121)	(4,421,662)	34%	(2,189,259)	(38,200)
Property tax revenue	(1,989,235)	(22,539,139)	(20,549,904)	9%	(1,892,358)	(96,877)
Interest revenue	(1,417)	(350,000)	(348,583)	0%	(3,559)	2,141
FTZ reimbursement	0	(350,000)	(350,000)	0%	0	0
Renew & replace transfer out	0	1,783,000	1,783,000	0%	0	0
<u>Totals for Non-operating revenue</u>	<u>(4,218,111)</u>	<u>(28,105,260)</u>	<u>(23,887,149)</u>	<u>15%</u>	<u>(4,085,175)</u>	<u>(132,936)</u>
<u>Total Revenue</u>	<u>(8,861,406)</u>	<u>(34,500,000)</u>	<u>(25,638,594)</u>	<u>26%</u>	<u>(8,432,168)</u>	<u>(429,238)</u>

Unrestricted Fund (Unaudited)

Summary of Expense

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
Salary and wages						
Faculty full-time	1,952,044	7,781,351	5,829,307	25%	2,015,456	(63,412)
Admin full-time	421,023	1,587,756	1,166,733	27%	411,927	9,096
Professional full-time	1,861,810	7,149,962	5,288,152	26%	1,817,921	43,889
Classified full-time	320,880	3,871,848	3,550,968	8%	1,036,121	(715,241)
Part-time	526,159	3,771,925	3,245,766	14%	449,103	77,056
Salary increase	0	220,000	220,000	0%	0	0
Vacancy savings	0	(3,704,027)	(3,704,027)	0%	0	0
<u>Totals for Salary and wages</u>	<u>5,081,917</u>	<u>20,678,815</u>	<u>15,596,898</u>	<u>25%</u>	<u>5,730,528</u>	<u>(648,612)</u>
Benefits						
Benefits	1,202,293	4,176,934	2,974,641	29%	1,006,861	195,432
<u>Totals for Benefits</u>	<u>1,202,293</u>	<u>4,176,934</u>	<u>2,974,641</u>	<u>29%</u>	<u>1,006,861</u>	<u>195,432</u>
Operating expenses						
Contract services	1,047,353	3,173,896	2,126,543	33%	1,009,794	37,559
Legal	500	12,485	11,985	4%	0	500
Operations	123,337	760,700	637,363	16%	73,660	49,677
Utilities and Rent	420,965	2,016,046	1,595,081	21%	339,716	81,249
Postage, printing, and supplies	236,702	1,339,960	1,103,258	18%	68,516	168,186
Bank fees	5,315	84,400	79,085	6%	5,902	(587)
Capital outlay & leases	21,499	56,503	35,004	38%	14,909	6,589
Insurance	32,273	1,846,069	1,813,796	2%	28,936	3,337
Public relations and advertising	6,823	257,098	250,275	3%	6,952	(129)
Misc.	223,225	400,536	177,311	56%	171,840	51,385
Reimbursement from Others	0	(303,442)	(303,442)	0%	0	0
MTN Payment	0	0	0	0%	0	0

Unrestricted Fund (Unaudited)

Arbitrage Payment	(35,806)	0	35,806	0%	0	(35,806)
<u>Totals for Operating expenses</u>	<u>2,082,186</u>	<u>9,644,251</u>	<u>7,562,065</u>	<u>22%</u>	<u>1,720,226</u>	<u>361,960</u>
<u>Total Expense</u>	<u>8,366,395</u>	<u>34,500,000</u>	<u>26,133,605</u>	<u>24%</u>	<u>8,457,615</u>	<u>(91,220)</u>

Unrestricted Fund (Unaudited)

Summary of Fund Bal

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
Operating expenses						
Contract services	61,730	0	(61,730)	0%	158,956	(97,226)
Operations	5,059	0	(5,059)	0%	0	5,059
Utilities and Rent	0	0	0	0%	7,016	(7,016)
Postage, printing, and supplies	119,137	0	(119,137)	0%	570,629	(451,491)
Capital outlay & leases	0	0	0	0%	212,513	(212,513)
Misc.	0	0	0	0%	5,327	(5,327)
<u>Totals for Operating expenses</u>	<u>185,926</u>	<u>0</u>	<u>(185,926)</u>	<u>0%</u>	<u>954,441</u>	<u>(768,515)</u>
<u>Total Fund Bal</u>	<u>185,926</u>	<u>0</u>	<u>(185,926)</u>	<u>0%</u>	<u>954,441</u>	<u>(768,515)</u>

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
<u>Expense by Division</u>						
<u>Summary for President</u>						
Board of Trustees	0	19,400	19,400	0%	2,098	(2,098)
Campus Police	142,192	676,458	534,266	21%	169,255	(27,063)
Gen Institution	54,909	294,119	239,210	19%	67,826	(12,917)
Information Technology Serv	828,603	2,176,403	1,347,800	38%	777,291	51,312
Internal Audit	8,045	150,000	141,955	5%	9,621	(1,576)
OPEAR	126,521	454,498	327,978	28%	125,772	748
Presidents Office	159,739	536,159	376,420	30%	158,301	1,438
Self Study SACS	0	10,000	10,000	0%	0	0
Staff Attorney	48,155	171,117	122,961	28%	41,492	6,663
<u>Totals for President</u>	<u>1,368,164</u>	<u>4,488,154</u>	<u>3,119,990</u>	<u>30%</u>	<u>1,351,658</u>	<u>16,507</u>
<u>Summary for VP Fiscal Affairs</u>						
Central Mail	16,779	134,017	117,238	13%	24,663	(7,884)
Custodial Services	55,217	311,391	256,174	18%	78,241	(23,024)
Facilities	580,526	4,112,218	3,531,692	14%	642,538	(62,012)
Financial Services	185,067	822,771	637,705	22%	234,485	(49,418)
Grounds	23,560	111,691	88,132	21%	33,399	(9,840)
Human Resources	202,280	673,719	471,440	30%	119,745	82,535
Maintenance Tax Note	0	0	0	0%	0	0
Purchasing	75,554	280,501	204,947	27%	70,379	5,175
Records Mgmt	5,009	20,952	15,943	24%	2,224	2,785
Reimbursement	0	(303,442)	(303,442)	0%	0	0
Salary Savings	0	(3,704,027)	(3,704,027)	0%	0	0
Staff Benefits	222,700	3,793,808	3,571,107	6%	207,006	15,694
Tax Admin	93,165	232,631	139,466	40%	46,213	46,953

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
Utilities	179,856	1,125,000	945,144	16%	128,615	51,241
Vehicle Operations	13,356	99,525	86,169	13%	21,683	(8,327)
VP College & Fin Svcs	49,817	182,058	132,241	27%	55,256	(5,439)
<u>Totals for VP Fiscal Affairs</u>	<u>1,702,886</u>	<u>7,892,813</u>	<u>6,189,928</u>	<u>22%</u>	<u>1,664,447</u>	<u>38,438</u>
<u>Summary for VP Institutional Advancement</u>						
COM Foundation Dept	21,745	104,431	82,686	21%	30,486	(8,741)
Marketing and Communications	171,646	820,213	648,568	21%	153,324	18,321
VP Institutional Advancement	165,457	539,883	374,425	31%	156,204	9,253
<u>Totals for VP Institutional Advancement</u>	<u>358,848</u>	<u>1,464,526</u>	<u>1,105,679</u>	<u>25%</u>	<u>340,014</u>	<u>18,834</u>
<u>Summary for VP Instruction</u>						
Acad Succ Re/Wr	225,692	772,228	546,536	29%	231,031	(5,338)
Accting-Credit	23,864	115,939	92,075	21%	38,094	(14,230)
Adm-C.I.D.T.	7,808	71,330	63,522	11%	15,752	(7,944)
Adm-Cont Ed	60,614	523,575	462,961	12%	134,361	(73,747)
Adm-Ind Tech	2,122	8,081	5,959	26%	0	2,122
Adm-Instruct	8,205	74,018	65,813	11%	16,239	(8,034)
Adm-Perf & Vis Arts	8,455	62,338	53,884	14%	20,182	(11,727)
Adm-Pub Svc Ed	10,165	69,080	58,915	15%	16,125	(5,960)
Adm-Science	8,955	11,278	2,323	79%	8,595	360
Adm-Soc Sci	9,869	75,887	66,019	13%	17,278	(7,410)
Adult Education	48,524	196,185	147,661	25%	55,593	(7,069)
Allied Health CE	32,716	333,808	301,092	10%	72,031	(39,315)
Art	68,072	220,644	152,572	31%	62,513	5,559
Art Gallery	15,279	52,864	37,585	29%	14,825	454
Biol & Nutrition	189,897	604,061	414,163	31%	184,536	5,361
Bus Tech	0	0	0	0%	3,104	(3,104)
C.I.S.	25,990	67,635	41,644	38%	24,560	1,431

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
Chemistry	48,356	219,364	171,008	22%	49,004	(648)
Child Develop	21,314	64,034	42,720	33%	20,360	954
Cmnty Theater	81,355	282,648	201,293	29%	98,426	(17,071)
Collegiate H.S.-CR	34,015	141,615	107,600	24%	39,983	(5,968)
Cosmetology	190,192	545,798	355,607	35%	159,149	31,043
Criminal Justice	22,486	80,024	57,538	28%	24,788	(2,302)
Dean Cont Ed	35,180	12,308	(22,872)	286%	250	34,930
Dean Gen Ed	40,637	184,034	143,396	22%	51,862	(11,224)
Distance Ed	162,373	402,046	239,673	40%	161,621	752
Drafting	21,054	60,483	39,429	35%	19,447	1,607
Dual Credit Dept	37,951	161,212	123,261	24%	43,701	(5,750)
Economics	24,707	69,703	44,996	35%	21,444	3,263
EMS-Credit	64,478	178,048	113,569	36%	74,992	(10,514)
Fire Tech	65,238	129,065	63,827	51%	85,524	(20,286)
Firearms Acad	2,446	39,975	37,529	6%	3,727	(1,281)
Foreign Lang	20,847	63,298	42,451	33%	19,493	1,354
Gen Bus-Credit	50,052	61,579	11,527	81%	20,670	29,382
Geology	19,425	59,818	40,392	32%	19,818	(392)
Government	99,613	262,296	162,683	38%	88,347	11,267
Graphic Arts	28,528	66,939	38,411	43%	28,320	208
Health and PE Credit	42,947	123,037	80,090	35%	40,899	2,048
Health Info Mgmt	45,567	180,289	134,723	25%	42,053	3,514
Hist & Geog	73,697	219,998	146,301	33%	72,328	1,368
Humanities	64,089	181,285	117,196	35%	55,515	8,574
Instr Tech Department	28,852	229,059	200,207	13%	58,066	(29,214)
Instr Tech Lab Mgrs	22,258	139,761	117,502	16%	38,284	(16,025)
Law Enforcement	27,134	74,340	47,205	37%	20,799	6,335
Law Enforcemnt-NonCR	19,807	1,962	(17,846)	1010%	23,894	(4,087)

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
LC Ctr Admin	148	20,800	20,652	1%	1,353	(1,204)
Library	206,587	624,363	417,777	33%	212,114	(5,527)
Management	4,410	880	(3,531)	501%	15,801	(11,391)
Massage Therapy	1,988	7,900	5,912	25%	0	1,988
Math	219,263	694,169	474,906	32%	201,743	17,520
Medical Assistant	21,614	90,986	69,371	24%	20,854	760
Music	81,622	237,165	155,544	34%	95,970	(14,349)
Networking	28,379	61,925	33,545	46%	24,211	4,168
Nursing Administration	40,690	383,487	342,796	11%	86,014	(45,324)
Nursing-AD	342,282	1,419,608	1,077,326	24%	333,313	8,969
Nursing-VN	91,716	239,937	148,221	38%	100,181	(8,465)
Pharmacy Tech	24,993	84,640	59,647	30%	26,995	(2,001)
Philosophy	10,188	734	(9,454)	1388%	10,851	(663)
Physics	33,979	75,887	41,908	45%	33,024	955
Process Tech	126,198	483,940	357,742	26%	179,413	(53,215)
Prof Develop Acad	725	9,000	8,275	8%	0	725
Psychology	101,416	313,310	211,894	32%	99,325	2,090
Safety-CR	25,617	121,723	96,106	21%	28,840	(3,223)
Senior Adult Dept	53,108	204,279	151,170	26%	54,779	(1,671)
Social Science Non CR	10,145	712	(9,433)	1424%	10,802	(657)
Sociology	20,087	57,675	37,587	35%	18,741	1,346
Speaking,Reading,Writing	107,877	508,501	400,624	21%	129,600	(21,723)
Theater Arts-Credit	30,279	148,687	118,408	20%	15,193	15,085
Thermal Tech-NonCR	27,262	27,959	697	98%	6,394	20,868
Virtual College TX	0	0	0	0%	1,120	(1,120)
VP Instruction	126,232	3,197,183	3,070,952	4%	98,813	27,419
Welding-Cred	141,032	494,832	353,800	29%	131,517	9,515

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
<u>Totals for VP Instruction</u>	<u>4,018,662</u>	<u>17,003,246</u>	<u>12,984,584</u>	<u>24%</u>	<u>4,234,542</u>	<u>(215,880)</u>
<u>Summary for VP of Instruction</u>						
Allied Health Admin	2,461	12,073	9,612	20%	0	2,461
CE-CAN Program	19,380	75,212	55,831	26%	0	19,380
CE-CPR	208	2,310	2,102	9%	0	208
CE-Dental	2,164	10,685	8,520	20%	0	2,164
Nursing - BSN	0	7,545	7,545	0%	0	0
Program Development	31,204	23,708	(7,496)	132%	0	31,204
<u>Totals for VP of Instruction</u>	<u>55,417</u>	<u>131,533</u>	<u>76,116</u>	<u>42%</u>	<u>0</u>	<u>55,417</u>
<u>Summary for VP Student Services</u>						
Admissions	74,651	320,964	246,313	23%	92,921	(18,270)
Advise Center	182,877	654,357	471,480	28%	180,553	2,324
Career & Placement	23,435	112,438	89,003	21%	0	23,435
Career Svcs	0	0	0	0%	0	0
Counseling	0	0	0	0%	0	0
Enrollment Mgmt	37,433	157,487	120,054	24%	24,409	13,024
Facilities & Student Recreat	20,218	116,352	96,133	17%	5,006	15,212
Judicial Affairs	42,694	183,629	140,935	23%	52,116	(9,421)
Multicultural Department	3,023	12,500	9,477	24%	1,769	1,254
Recruitment	103,452	372,777	269,325	28%	100,523	2,929
Stu Financial Svcs	130,214	559,729	429,515	23%	107,727	22,487
Stu Organizations	64,046	287,751	223,705	22%	79,046	(15,000)
Student Graduation	7,826	74,080	66,254	11%	0	7,826
Svcs-Disab Students	5,281	37,359	32,078	14%	15,736	(10,455)
Testing	53,614	237,187	183,573	23%	59,905	(6,291)
Title V Grant	21	0	(21)	0%	0	21
Veteran Affairs	43,898	112,568	68,670	39%	42,639	1,259

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
VP Student Services	69,735	280,551	210,816	25%	104,604	(34,869)
<u>Totals for VP Student Services</u>	<u>862,418</u>	<u>3,519,727</u>	<u>2,657,310</u>	<u>25%</u>	<u>866,954</u>	<u>(4,536)</u>
<u>Totals for Expense</u>	<u>8,366,395</u>	<u>34,500,000</u>	<u>26,133,605</u>	<u>24%</u>	<u>8,457,615</u>	<u>(91,220)</u>
<u>Fund Bal by Division</u>						
<u>Summary for VP Fiscal Affairs</u>						
Fund Balance - Academic Support	4,730	0	(4,730)	0%	0	4,730
Fund Balance - Institutional Support	119,466	0	(119,466)	0%	327,641	(208,176)
Fund Balance - Instruction	33,000	0	(33,000)	0%	533,487	(500,487)
Fund Balance - Oper & Maint	0	0	0	0%	64,472	(64,472)
Fund Balance - Student Services	28,730	0	(28,730)	0%	28,842	(111)
<u>Totals for VP Fiscal Affairs</u>	<u>185,926</u>	<u>0</u>	<u>(185,926)</u>	<u>0%</u>	<u>954,441</u>	<u>(768,515)</u>
<u>Totals for Fund Bal</u>	<u>185,926</u>	<u>0</u>	<u>(185,926)</u>	<u>0%</u>	<u>954,441</u>	<u>(768,515)</u>
<u>Totals for Report</u>	<u>8,552,321</u>	<u>34,500,000</u>	<u>25,947,679</u>		<u>9,412,056</u>	<u>(859,735)</u>



MINUTE ORDER

To: Board of Trustees
From: Dr. Warren Nichols, President
Date: January 12, 2022
Subject: Monthly Financial & Investment Reports

AGENDA ITEM DESCRIPTION:

Consideration of and possible acceptance of the December 2021 Investment and Financial Reports.

PURPOSE

To report to the Board of Trustees the year-to-date revenues and expenses for the college, comparison of revenues and expenses to budget, and the college's current cash balance.

FUNDING SOURCE:

N/A

PROPOSED MOTION:

Suggested motion: "I move the Board of Trustees accept the December 2021 Investment Report and the December 2021 Financial Reports."

BACKGROUND

The investment officer shall prepare and submit to the Board a written report of investment transactions for all funds covered by the PFIA under Education Code 51.0032 and Government Code 2256.023.

In accordance with COM policy CDA (LOCAL) – Periodic financial reports shall be submitted to the Board outlining the progress of the budget to that date and reporting on the status of all District funds and District accounts.

ATTACHMENTS

1. December 2021 Investment Discussion & Report
2. December 2021 Revenue & Expense Summary
3. December 2021 Expense by Division Report



INVESTMENT REPORT
For the Month Ended December 2021

Investment discussion:

College of the Mainland earned \$3,459 for the month of December on its short-term investments in TexPool & Logic for a total of \$9,802 investment interest earned fiscal year to date. The College earned an additional \$1, fiscal year to date, from interest-bearing checking accounts. In total, the College earned \$9,803 interest for the fiscal year to date period ending December: TexPool - \$1,955 Logic 20 - \$7,847, and TFB - \$1.

Investments in the TexPool & Logic investment pools remain more profitable than fixed rate certificate of deposits purchased at our depository bank. In addition, the investment pool provides more efficient liquidity than certificates of deposit, which are restricted to specific term lengths. Therefore, all investment funds remain in TexPool, Logic and interest earning checking accounts.

Investment Compliance Statement:

We provide reasonable assurance that the attached listing constitutes all investments currently owned by the College of the Mainland District as of the date indicated and that all these investments and investing procedures conform to the "Public Funds Investment Act" as amended by House Bill 2459 of the 74th Texas Legislature.

Furthermore, these same investments are in compliance with College of the Mainland's investment policy and strategy as adopted by the College of the Mainland's Board of Trustees.

A handwritten signature in blue ink, appearing to read 'Glen Burton', written over a horizontal line.

Glen Burton
Vice President of Fiscal Affairs
College of the Mainland

A handwritten signature in blue ink, appearing to read 'Trudy Trochesset', written over a horizontal line.

Trudy Trochesset
Controller
College of the Mainland



TexPool Investments for December 2021.

Investment	COM Fund	Balance Beginning of Month	Increases	Decreases	Interest Earned	Balance End of Month	Average Balance	Annualized Average Interest Rate
Operating	11	\$ 16,296,490	\$ 4,425,000	\$ 1,500,000	534	19,222,024	1,698,442	0.377%
Moody	41	26,603	-	-	1	26,604	26,603	0.040%
Totals		\$ 16,323,093	\$ 4,425,000	\$ 1,500,000	\$ 535	\$ 19,248,628	\$ 1,725,045	

Note: For the above listed investments in TexPool, book value is equivalent to market value.
There was no accrued interest as of December 2021.

Logic (Hilltop Securities) Investments for December 2021.

Investment	COM Fund	Balance Beginning of Month	Increases	Decreases	Interest Earned	Balance End of Month	Average Balance	Annualized Average Interest Rate
COM Bond 2020	46	\$ 50,057,200	\$ -	\$ 3,454,884	2,924	46,605,241	46,828,007	0.075%
Totals		\$ 50,057,200	\$ -	\$ 3,454,884	\$ 2,924	\$ 46,605,241	\$ 52,956,830	

Totals **\$ 66,380,293 \$ 4,425,000 \$ 4,954,884 \$ 3,459 \$ 65,853,869 \$ 54,681,874**

Unrestricted Fund (Unaudited)

Summary of Revenue

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
Operating revenue						
Tuition-credit	(4,038,850)	(4,127,440)	(88,590)	98%	(3,955,163)	(83,687)
Tuition-non-credit	(237,009)	(1,044,100)	(807,091)	23%	(183,502)	(53,507)
Exemptions and waivers	1,174,933	1,108,300	(66,633)	106%	1,272,075	(97,143)
Registration fees	(1,843,949)	(1,789,500)	54,449	103%	(1,831,664)	(12,284)
Other fees	(72,725)	(137,000)	(64,275)	53%	(66,680)	(6,045)
Grant revenue	(98,256)	(66,000)	32,256	149%	(38,014)	(60,242)
Sales and service revenue	(24,254)	(432,400)	(408,146)	6%	(114)	(24,139)
Miscellaneous revenue	(37,203)	(109,100)	(71,897)	34%	(68,692)	31,489
TPEG transfer in/out	0	202,500	202,500	0%	0	0
<u>Totals for Operating revenue</u>	<u>(5,177,313)</u>	<u>(6,394,740)</u>	<u>(1,217,427)</u>	<u>81%</u>	<u>(4,871,754)</u>	<u>(305,558)</u>
Non-operating revenue						
State appropriation-Academic	(2,859,125)	(6,649,121)	(3,789,996)	43%	(2,810,119)	(49,006)
Property tax revenue	(6,852,881)	(22,539,139)	(15,686,258)	30%	(6,166,041)	(686,841)
Interest revenue	(1,952)	(350,000)	(348,048)	1%	(4,240)	2,288
FTZ reimbursement	0	(350,000)	(350,000)	0%	0	0
Renew & replace transfer out	0	1,783,000	1,783,000	0%	0	0
<u>Totals for Non-operating revenue</u>	<u>(9,713,958)</u>	<u>(28,105,260)</u>	<u>(18,391,302)</u>	<u>35%</u>	<u>(8,980,399)</u>	<u>(733,559)</u>
<u>Total Revenue</u>	<u>(14,891,271)</u>	<u>(34,500,000)</u>	<u>(19,608,729)</u>	<u>43%</u>	<u>(13,852,154)</u>	<u>(1,039,117)</u>

Unrestricted Fund (Unaudited)

Summary of Expense

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
Salary and wages						
Faculty full-time	2,529,108	7,781,351	5,252,243	33%	2,631,518	(102,410)
Admin full-time	555,513	1,587,756	1,032,243	35%	554,642	871
Professional full-time	2,439,508	7,149,962	4,710,454	34%	2,393,471	46,036
Classified full-time	629,439	3,871,848	3,242,409	16%	1,373,679	(744,240)
Part-time	778,301	3,771,925	2,993,624	21%	665,580	112,720
Salary increase	0	220,000	220,000	0%	0	0
Vacancy savings	0	(3,704,027)	(3,704,027)	0%	0	0
<u>Totals for Salary and wages</u>	<u>6,931,868</u>	<u>20,678,815</u>	<u>13,746,947</u>	<u>34%</u>	<u>7,618,890</u>	<u>(687,022)</u>
Benefits						
Benefits	1,436,381	4,176,934	2,740,553	34%	1,475,757	(39,376)
<u>Totals for Benefits</u>	<u>1,436,381</u>	<u>4,176,934</u>	<u>2,740,553</u>	<u>34%</u>	<u>1,475,757</u>	<u>(39,376)</u>
Operating expenses						
Contract services	1,260,014	3,174,396	1,914,382	40%	1,230,957	29,057
Legal	500	12,485	11,985	4%	0	500
Operations	129,598	723,562	593,964	18%	127,397	2,201
Utilities and Rent	571,132	2,016,046	1,444,914	28%	406,365	164,767
Postage, printing, and supplies	291,688	1,334,460	1,042,772	22%	80,476	211,212
Bank fees	7,160	84,400	77,240	8%	9,036	(1,876)
Capital outlay & leases	26,429	61,503	35,074	43%	17,033	9,396
Insurance	41,913	1,846,069	1,804,156	2%	150,946	(109,033)
Public relations and advertising	29,278	257,098	227,820	11%	17,676	11,602
Misc.	238,448	437,674	199,226	54%	204,325	34,123
Reimbursement from Others	0	(303,442)	(303,442)	0%	0	0
MTN Payment	0	0	0	0%	0	0

Unrestricted Fund (Unaudited)

Arbitrage Payment	(35,806)	0	35,806	0%	0	(35,806)
<u>Totals for Operating expenses</u>	<u>2,560,355</u>	<u>9,644,251</u>	<u>7,083,896</u>	<u>27%</u>	<u>2,244,211</u>	<u>316,143</u>
<u>Total Expense</u>	<u>10,928,604</u>	<u>34,500,000</u>	<u>23,571,396</u>	<u>32%</u>	<u>11,338,858</u>	<u>(410,255)</u>

Unrestricted Fund (Unaudited)

Summary of Fund Bal

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
Operating expenses						
Contract services	61,730	0	(61,730)	0%	158,956	(97,226)
Operations	5,059	0	(5,059)	0%	0	5,059
Utilities and Rent	0	0	0	0%	52,301	(52,301)
Postage, printing, and supplies	173,052	0	(173,052)	0%	609,889	(436,837)
Capital outlay & leases	67,007	0	(67,007)	0%	229,920	(162,914)
Public relations and advertising	53,135	0	(53,135)	0%	0	53,135
Misc.	0	0	0	0%	5,327	(5,327)
<u>Totals for Operating expenses</u>	<u>359,983</u>	<u>0</u>	<u>(359,983)</u>	<u>0%</u>	<u>1,056,393</u>	<u>(696,410)</u>
<u>Total Fund Bal</u>	<u>359,983</u>	<u>0</u>	<u>(359,983)</u>	<u>0%</u>	<u>1,056,393</u>	<u>(696,410)</u>

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
<u>Expense by Division</u>						
<u>Summary for President</u>						
Board of Trustees	716	19,400	18,684	4%	2,098	(1,382)
Campus Police	197,731	692,018	494,287	29%	227,695	(29,964)
Gen Institution	82,609	294,119	211,510	28%	104,333	(21,724)
Information Technology Serv	977,675	2,204,960	1,227,285	44%	881,352	96,323
Internal Audit	8,045	150,000	141,955	5%	21,703	(13,658)
OPEAR	154,365	462,054	307,689	33%	214,290	(59,924)
Presidents Office	207,312	554,505	347,194	37%	220,633	(13,321)
Self Study SACS	500	10,500	10,000	5%	0	500
Staff Attorney	61,990	175,089	113,099	35%	55,973	6,017
<u>Totals for President</u>	<u>1,690,943</u>	<u>4,562,646</u>	<u>2,871,703</u>	<u>37%</u>	<u>1,728,076</u>	<u>(37,133)</u>
<u>Summary for VP Fiscal Affairs</u>						
Central Mail	25,721	137,238	111,517	19%	32,695	(6,974)
Custodial Services	79,935	318,890	238,955	25%	100,466	(20,532)
Facilities	806,936	4,125,582	3,318,646	20%	964,992	(158,055)
Financial Services	258,885	845,392	586,507	31%	315,503	(56,619)
Grounds	28,323	113,548	85,225	25%	43,127	(14,805)
Human Resources	252,611	685,220	432,609	37%	165,454	87,158
Maintenance Tax Note	0	0	0	0%	0	0
Purchasing	97,154	286,749	189,595	34%	94,162	2,992
Records Mgmt	5,009	20,952	15,943	24%	2,630	2,379
Reimbursement	0	(303,442)	(303,442)	0%	0	0
Salary Savings	0	(3,704,027)	(3,704,027)	0%	0	0
Staff Benefits	249,899	3,210,452	2,960,553	8%	296,862	(46,963)
Tax Admin	93,165	232,631	139,466	40%	95,851	(2,686)

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
Utilities	265,919	1,125,000	859,081	24%	136,860	129,059
Vehicle Operations	23,491	102,112	78,621	23%	28,500	(5,009)
VP College & Fin Svcs	65,775	185,651	119,875	35%	70,695	(4,919)
<u>Totals for VP Fiscal Affairs</u>	<u>2,252,823</u>	<u>7,381,946</u>	<u>5,129,123</u>	<u>31%</u>	<u>2,347,797</u>	<u>(94,974)</u>
<u>Summary for VP Institutional Advancement</u>						
COM Foundation Dept	29,696	106,267	76,571	28%	36,488	(6,792)
Marketing and Communications	236,688	832,212	595,524	28%	209,399	27,289
VP Institutional Advancement	211,999	553,569	341,570	38%	204,014	7,985
<u>Totals for VP Institutional Advancement</u>	<u>478,384</u>	<u>1,492,048</u>	<u>1,013,665</u>	<u>32%</u>	<u>449,901</u>	<u>28,482</u>
<u>Summary for VP Instruction</u>						
Acad Succ Re/Wr	302,649	819,534	516,884	37%	307,378	(4,729)
Accting-Credit	32,236	127,053	94,818	25%	50,815	(18,579)
Adm-C.I.D.T.	12,869	73,131	60,262	18%	21,340	(8,471)
Adm-Cont Ed	106,809	538,543	431,735	20%	182,794	(75,985)
Adm-Ind Tech	2,829	8,163	5,333	35%	0	2,829
Adm-Instruct	13,143	75,549	62,406	17%	21,889	(8,746)
Adm-Perf & Vis Arts	13,698	64,398	50,700	21%	26,565	(12,866)
Adm-Pub Svc Ed	15,587	70,622	55,034	22%	21,189	(5,602)
Adm-Science	14,480	13,040	(1,440)	111%	11,313	3,167
Adm-Soc Sci	15,498	77,468	61,969	20%	23,334	(7,836)
Adult Education	65,896	202,029	136,132	33%	74,463	(8,567)
Allied Health CE	39,922	347,479	307,557	11%	95,499	(55,577)
Art	88,034	227,426	139,392	39%	82,950	5,085
Art Gallery	19,686	54,297	34,612	36%	19,664	22
Biol & Nutrition	247,577	640,499	392,922	39%	247,754	(177)
Bus Tech	0	0	0	0%	4,656	(4,656)
C.I.S.	34,697	78,103	43,406	44%	32,811	1,886

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
Chemistry	60,600	238,468	177,867	25%	66,170	(5,569)
Child Develop	27,186	66,379	39,193	41%	27,085	101
Cmnty Theater	110,465	289,797	179,332	38%	126,319	(15,854)
Collegiate H.S.-CR	47,041	145,442	98,400	32%	53,816	(6,774)
Cosmetology	246,994	595,910	348,916	41%	213,041	33,953
Criminal Justice	29,121	82,467	53,347	35%	32,647	(3,527)
Dean Cont Ed	46,590	14,862	(31,728)	313%	323	46,267
Dean Gen Ed	56,395	188,015	131,620	30%	68,287	(11,892)
Distance Ed	194,840	411,295	216,455	47%	195,970	(1,129)
Drafting	27,846	66,032	38,186	42%	26,640	1,206
Dual Credit Dept	50,672	165,162	114,490	31%	57,276	(6,604)
Economics	31,953	74,718	42,765	43%	28,301	3,652
EMS-Credit	87,492	205,755	118,263	43%	97,142	(9,649)
Fire Tech	93,358	190,136	96,777	49%	123,394	(30,036)
Firearms Acad	8,230	40,672	32,442	20%	6,158	2,073
Foreign Lang	26,995	66,188	39,193	41%	25,643	1,353
Gen Bus-Credit	67,670	83,402	15,732	81%	28,725	38,945
Geology	27,019	67,271	40,252	40%	27,346	(328)
Government	130,847	288,233	157,386	45%	119,417	11,431
Graphic Arts	38,325	80,342	42,017	48%	38,887	(561)
Health and PE Credit	55,426	131,157	75,731	42%	55,075	351
Health Info Mgmt	59,183	193,051	133,867	31%	56,422	2,761
Hist & Geog	100,149	243,878	143,729	41%	100,189	(40)
Humanities	84,250	193,790	109,540	43%	75,392	8,858
Instr Tech Department	41,643	233,101	191,458	18%	78,108	(36,465)
Instr Tech Lab Mgrs	30,164	143,158	112,995	21%	51,537	(21,373)
Law Enforcement	33,942	93,439	59,498	36%	30,852	3,090
Law Enforcemnt-NonCR	24,522	12,575	(11,946)	195%	28,701	(4,179)

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
LC Ctr Admin	1,215	20,823	19,608	6%	1,742	(527)
Library	254,212	636,477	382,266	40%	273,022	(18,810)
Management	6,568	7,260	691	90%	21,618	(15,050)
Massage Therapy	2,967	10,835	7,869	27%	0	2,967
Math	287,706	744,147	456,441	39%	269,767	17,939
Medical Assistant	27,679	94,441	66,763	29%	27,170	509
Music	106,341	252,987	146,646	42%	126,549	(20,208)
Networking	37,803	79,227	41,424	48%	32,486	5,317
Nursing Administration	54,474	403,044	348,570	14%	118,950	(64,476)
Nursing-AD	433,075	1,459,102	1,026,027	30%	442,945	(9,870)
Nursing-VN	119,541	245,553	126,012	49%	132,405	(12,863)
Pharmacy Tech	31,997	90,042	58,045	36%	34,988	(2,991)
Philosophy	13,658	5,225	(8,433)	261%	14,928	(1,270)
Physics	45,860	94,649	48,789	48%	46,456	(596)
Process Tech	172,251	519,084	346,833	33%	242,202	(69,951)
Prof Develop Acad	760	9,000	8,240	8%	0	760
Psychology	131,985	333,258	201,273	40%	134,506	(2,521)
Safety-CR	34,322	124,900	90,578	27%	38,979	(4,657)
Senior Adult Dept	76,430	226,274	149,844	34%	73,872	2,558
Social Science Non CR	13,594	5,161	(8,433)	263%	14,854	(1,259)
Sociology	26,181	61,803	35,622	42%	24,845	1,337
Speaking,Reading,Writing	144,726	516,730	372,004	28%	173,029	(28,303)
Theater Arts-Credit	39,757	157,230	117,473	25%	20,973	18,784
Thermal Tech-NonCR	35,823	58,467	22,644	61%	8,380	27,443
Virtual College TX	0	0	0	0%	1,120	(1,120)
VP Instruction	163,947	2,615,119	2,451,172	6%	137,092	26,855
Welding-Cred	176,057	535,063	359,007	33%	171,521	4,536

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
<u>Totals for VP Instruction</u>	<u>5,303,459</u>	<u>17,327,932</u>	<u>12,024,473</u>	<u>31%</u>	<u>5,647,668</u>	<u>(344,209)</u>
<u>Summary for VP of Instruction</u>						
Allied Health Admin	3,196	12,146	8,950	26%	0	3,196
CE-CAN Program	19,395	79,214	59,819	24%	0	19,395
CE-CPR	208	2,310	2,102	9%	0	208
CE-Dental	4,715	13,987	9,272	34%	0	4,715
Nursing - BSN	0	7,545	7,545	0%	0	0
Program Development	38,229	26,112	(12,117)	146%	0	38,229
<u>Totals for VP of Instruction</u>	<u>65,743</u>	<u>141,314</u>	<u>75,572</u>	<u>47%</u>	<u>0</u>	<u>65,743</u>
<u>Summary for VP Student Services</u>						
Admissions	99,459	329,644	230,185	30%	124,583	(25,124)
Advise Center	233,949	670,800	436,851	35%	241,758	(7,809)
Career & Placement	29,681	114,085	84,404	26%	0	29,681
Career Svcs	0	0	0	0%	0	0
Counseling	0	0	0	0%	0	0
Enrollment Mgmt	49,983	159,688	109,705	31%	33,962	16,021
Facilities & Student Recreat	38,421	116,745	78,325	33%	7,846	30,574
Judicial Affairs	59,523	187,835	128,312	32%	69,045	(9,522)
Multicultural Department	3,023	12,500	9,477	24%	2,494	529
Recruitment	133,918	381,558	247,640	35%	134,020	(102)
Stu Financial Svcs	170,171	571,122	400,952	30%	143,681	26,489
Stu Organizations	84,806	295,413	210,608	29%	107,773	(22,967)
Student Graduation	7,826	74,080	66,254	11%	2,810	5,016
Svcs-Disab Students	8,710	38,639	29,930	23%	25,755	(17,045)
Testing	70,526	240,913	170,387	29%	80,975	(10,450)
Title V Grant	27	0	(27)	0%	0	27
Veteran Affairs	56,899	115,745	58,846	49%	56,938	(39)

Unrestricted Fund (Unaudited)

	<u>Current Actual</u>	<u>2021-22 Budget</u>	<u>Budget Remaining</u>	<u>Budget Pct.YTD</u>	<u>Prior Year to Actual</u>	<u>Curr. vs Prior Year to Year</u>
VP Student Services	90,334	285,346	195,012	32%	133,777	(43,443)
<u>Totals for VP Student Services</u>	<u>1,137,253</u>	<u>3,594,114</u>	<u>2,456,861</u>	<u>32%</u>	<u>1,165,417</u>	<u>(28,164)</u>
<u>Totals for Expense</u>	<u>10,928,604</u>	<u>34,500,000</u>	<u>23,571,396</u>	<u>32%</u>	<u>11,338,858</u>	<u>(410,255)</u>
<u>Fund Bal by Division</u>						
<u>Summary for VP Fiscal Affairs</u>						
Fund Balance - Academic Support	4,730	0	(4,730)	0%	0	4,730
Fund Balance - Institutional Support	280,475	0	(280,475)	0%	363,310	(82,836)
Fund Balance - Instruction	46,048	0	(46,048)	0%	585,060	(539,012)
Fund Balance - Oper & Maint	0	0	0	0%	79,182	(79,182)
Fund Balance - Student Services	28,730	0	(28,730)	0%	28,842	(111)
<u>Totals for VP Fiscal Affairs</u>	<u>359,983</u>	<u>0</u>	<u>(359,983)</u>	<u>0%</u>	<u>1,056,393</u>	<u>(696,410)</u>
<u>Totals for Fund Bal</u>	<u>359,983</u>	<u>0</u>	<u>(359,983)</u>	<u>0%</u>	<u>1,056,393</u>	<u>(696,410)</u>
<u>Totals for Report</u>	<u>11,288,586</u>	<u>34,500,000</u>	<u>23,211,414</u>		<u>12,395,252</u>	<u>(1,106,665)</u>



PRESIDENT'S OFFICE

Lago Mar TERZ Representative

Consideration of and Possible Action to Appoint a Representative to the Lago Mar TERZ Board

Motion: I move to appoint _____ as the COM representative on the TERZ board.



PRESIDENT'S OFFICE

March 2022 Board of Trustees Meeting

I move that the March 2022 Board of Trustees Meeting be held on Wednesday, March 30th.



PRESIDENT'S OFFICE

Board Report

Presenter: Board Chair

A. Miscellaneous Updates



PRESIDENT'S OFFICE

President's Report

Presenter: Dr. Warren Nichols

A. Updates

1. Enrollment Update – Dr. Helen Brewer, Vice President for Student Services
2. Bond Project Updates

B. Reminders/Announcements

1. Board Meetings
 - a. February 2022 – Monday, February 28th
 - b. March 2022 – Wednesday, March 30th (tentative)
2. College of the Mainland voted Texas City/LaMarque Chamber Large Business of the Year

C. Resignations and Retirement Report

D. Miscellaneous Updates



PRESIDENT'S OFFICE

Resignations & Retirements

Last Name	First Name	Position	Hire Date	Last Date of Work	Termination Reason
Leacroy	Jonathan	Faculty - PTEC	09/01/2015	12/31/2021	Resignation
Baker	Elaine	Faculty – Cosmetology	09/01/1999	01/07/2022	Retirement
Avery	Richard	Faculty – Social & Behavioral Sciences	09/01/2013	01/11/2022	Resignation
Wright-Gidley	Jodi	Major Gifts Officer	12/02/2019	01/14/2022	Resignation
Davis	Neil	Programmer Analyst	01/02/2020	01/15/2022	Resignation
Orzoff	Jordan	Director, OPEAR	09/08/2020	02/09/2022	Resignation
Gallaway	Cindy	Administrative Assistant IV	03/29/2005	02/28/2022	Retirement
Holly	Kathryn	Grant Accountant	07/06/2015	04/01/2022	Resignation
Hammett	Elizabeth	Faculty - Humanities	08/23/2004	08/31/2022	Retirement



PRESIDENT'S OFFICE

Executive Session

If, during the course of the meeting covered by this Notice, the Board should determine that a closed or executive meeting or session of the Board should be held or is required in relation to any items included in this Notice, then such closed or executive meeting or session as authorized by Section 551.001 et seq. of the Texas Government Code (the Open Meetings Act) will be held by the Board at that date, hour and place given in this Notice or as soon after the commencement of the meeting covered by the Notice as the Board may conveniently meet in such closed or executive meeting or session concerning any and all subjects and for any and all purposes permitted by Sections 551.071, inclusive, of the Open Meetings Act, including, but not limited to:

Section 551.071 – For the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law.

Section 551.072 – For the purpose of discussing the purchase, exchange, lease or value of real property.

Section 551.073 – For the purpose of considering a negotiated contract for a prospective gift or donation.

Section 551.074 – For the purpose of considering the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear complaints or charges against a public officer or employee.

Section 551.076 – To consider the deployment, or specific occasions for implementation, of security personnel or devices.

Section 551.082 – For the purpose of considering discipline of a student or to hear a complaint by an employee against another employee if the complaint or charge directly results in a need for a hearing.

Section 551.084 – For the purpose of excluding a witness or witnesses from a hearing during examination of another witness.

Should any final action, final decision, or final vote be required in the opinion of the Board with regard to any matter considered in such closed or executive meeting or session, then such final action, final decision, or final vote shall be at either:

- A. The open meeting covered by this Notice upon the reconvening of the public meeting, or
- B. At a subsequent public meeting of the Board upon notice thereof, as the Board shall determine.