

Vantage Points

A Board Member's Guide to Update 93

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

PLEASE NOTE: This Update 93 *Vantage Points* and the Localized Update 93 packet may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.

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

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

© 2012 Texas Association of School Boards, Inc. All rights reserved.

Update 93 is the second of two post-legislative updates encompassing changes in law from the 82nd Legislative Session. Update 93 addresses topics including financial exigency, dropout recovery partnership programs with community colleges, genetic nondiscrimination, reports of educator misconduct, challenges to instructional materials, student early mental health intervention and suicide prevention, bullying and harassment, student records, and student expulsion for serious misbehavior while in a disciplinary alternative education program (DAEP).

**District
Operations**

At CEA(LEGAL), we have included new commissioner's rules regarding minimum standards a district must meet before the board may declare a financial exigency. A district may adopt a resolution declaring a financial exigency under one of the six conditions listed in the policy, and the board must provide notice to the commissioner within 20 calendar days of adopting a resolution declaring or extending a declared financial exigency.

**Financial
Exigency**

Tax Issues

At BDAF(LEGAL), we have added a provision on registration requirements for board-designated tax officials. New language also allows electronic delivery of tax bills if there is a written agreement between the assessor and tax payer.

Changes at CCG(LEGAL) address tax exemptions for disabled veterans and the surviving spouses of disabled veterans who have died. New provisions permit the surviving spouse of a disabled veteran to continue to receive the property tax exemption for a residential homestead after the veteran's death. New provisions also allow for a prorated exemption based on a veteran's disability if the veteran or a surviving spouse qualified for an exemption for only part of a tax year.

Included at CCH(LEGAL) are new nepotism provisions regarding appraisal district board members, as well as a new provision authorizing the appraisal district board of directors to provide for auxiliary members to assist the board in performing its duties.

**Establishing
Partnerships**

New provisions at EHBC(LEGAL) and GNC(LEGAL) outline a new type of dropout recovery program. Eligible school districts may partner with a community college district in which the school district is located to provide a dropout recovery program on the community college campus for students to successfully complete and receive a diploma from the school district. Related provisions at FEB(LEGAL) state that a student is considered in attendance at the school district if the student is participating in one of these dropout recovery programs.

At CDH(LEGAL), new provisions allow a school district to enter into a partnership with a private entity for the acquisition and development of education facilities, technology and other public infrastructure, and government facilities that serve a public need.

Data Security

A revised provision at CQ(LEGAL) requires a district that owns or licenses computerized data that includes sensitive personal information to notify “any individual” rather than “any resident of this state” about a breach of system security, thereby broadening a district’s notification requirements.

Employment Issues

At DAA(LEGAL), we have added provisions throughout from the final rules on the Americans with Disabilities Act Amendments Act (ADAAA), as well as an existing statutory provision prohibiting the district from directly or indirectly asking about the religious affiliation of a person applying for employment.

Discrimination

Genetic Nondiscrimination

A new legally referenced policy at DAB(LEGAL) houses information on the federal Genetic Information Nondiscrimination Act (GINA), which prohibits discrimination against employees or applicants based on genetic information; restricts districts from requesting, requiring, or purchasing genetic information; and strictly limits the disclosure of genetic information. Although GINA applies only to districts with 15 or more employees, DAB(LEGAL) is recommended for inclusion in all school district policy manuals because of possible fluctuations in a district’s number of employees. These genetic information provisions are also referenced at DBB(LEGAL) and DECA(LEGAL) regarding a district’s receipt of employee medical information.

DAB(LOCAL) AND DAC(LOCAL) POLICY CONSIDERATIONS

Local policy text addressing Objective Criteria for Personnel Decisions, previously at DAB(LOCAL), has been moved to DAC to accommodate the new GINA material now at DAB.

Separation from Employment

At DFE(LEGAL), we have incorporated amended State Board for Educator Certification (SBEC) rules addressing sanctions against an employee who abandons his or her contract. Included in the new rules are revised deadlines for the board to submit the complaint and documentation to SBEC.

A provision at CRD(LEGAL) has been revised to clarify the dates for continuation of health insurance coverage for an employee who resigns after the last day of instruction.

**Employee
Conduct**

At DF(LEGAL), amended SBEC rules revise the definition of “solicitation of a romantic relationship” between an educator and student.

New SBEC rules incorporated at DF(LEGAL) and DH(LEGAL) provide that a superintendent may notify SBEC of any educator misconduct that the superintendent believes in good faith may be subject to sanctions by SBEC. At DH(LEGAL), we have also added an existing statutory provision requiring a superintendent to provide notice to the board and the educator when filing a written report to SBEC of educator misconduct.

Also from amended SBEC rules, we have added a definition of “reported criminal history” at DBAA(LEGAL) and DH(LEGAL).

DH(LOCAL) POLICY CONSIDERATIONS

Recommended changes to this local policy reflect revisions to the definition of “moral turpitude” in SBEC rules. The definition now includes acts constituting neglect under the Family Code and revised drug- and alcohol-related offenses, which include conspiracy to possess a controlled substance or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute a controlled substance; and felony driving while intoxicated (DWI). Previous text addressing “acts constituting public intoxication, operating a vehicle while under the influence of alcohol, or disorderly conduct” is recommended for deletion since this conduct is no longer listed as a crime involving moral turpitude in SBEC rules.

Instruction

EFA(LOCAL) POLICY CONSIDERATIONS

Recommended changes to this local policy include replacing the term “textbooks” with “instructional materials,” in accordance with terminology changes implemented by the legislature. Additional changes include recommended revisions to the process for appealing a decision of the instructional materials reconsideration committee. A complainant may now file an appeal with the appropriate administrator, rather than at a specific level, under the district’s grievance policies, and the appeal must include documentation of the informal reconsideration process, if any, and the Request for Reconsideration of Instructional Materials form.

A final recommended change clarifies that the selection criteria listed in the policy apply to the selection of all instructional resources, not just resources other than textbooks.

**Funding for
Special
Programs**

Information from recently revised State Board of Education (SBOE) rules regarding the maximum allowable indirect cost allotments for special programs funding has been added at EHBC(LEGAL). The rules also address indirect cost allotments for these programs beginning with the 2012–13 school year.

Accountability

At AIA(LEGAL), a new provision allows the commissioner to award a distinction designation to a campus with a significant number of students below grade 9 who perform satisfactorily on an end-of-course assessment.

Student Issues

**Wellness and
Safety**

A new legally referenced policy at FFB(LEGAL) addresses early mental health intervention and suicide prevention programs. As outlined in the policy, the Texas Department of State Health Services (TDSHS) and TEA must provide a list of recommended early mental health intervention and suicide prevention programs from which school districts may choose to implement. A board may adopt a policy that establishes procedures for notifying the parent or guardian of a student who has been identified as being in need of early mental health intervention and suicide prevention; designates a liaison officer for purposes of identifying such students; and sets out available counseling alternatives. The policy must prohibit the use of medical screening to identify a student without the prior consent of the student's parent or guardian. In addition, the district's policy and procedures are not intended to give a school district the authority to prescribe medications; all medical decisions are to be made by the student's parent or guardian.

Any adopted early mental health intervention and suicide prevention policy and accompanying procedures must be included in the student handbook and district improvement plan. See BQ(LEGAL).

FFB(LOCAL) POLICY CONSIDERATIONS

TASB Policy Service has developed sample language for districts that wish to adopt a local policy on early mental health intervention and suicide prevention programs. To review the sample text for this optional policy, the district should contact its policy consultant.

A new legally referenced policy at FFF(LEGAL) includes provisions on the depiction of minors in visual material. Annually, beginning with the 2012–13 school year, a district is required to provide or make information available on state-developed educational programs addressing visual material depicting minors to parents and students at an appropriate grade level.

Bullying and Harassment

A new provision at BDF(LEGAL) now allows a board to appoint representatives of local domestic violence programs to the district's school health advisory council (SHAC).

A new legally referenced policy at FFI(LEGAL) houses bullying material, which is effective with the 2012–13 school year. A revised definition of bullying clarifies that the term includes engaging in expression through electronic means, while language from the previous definition stating that the existence of bullying is determined by the board or designee was removed by the legislature. Behavior is now considered bullying if the conduct exploits an imbalance of power between the students involved through written or verbal expression or physical conduct and interferes with a student's education or substantially disrupts the operation of a school. A school board is required to adopt a local policy, including any necessary procedures, addressing bullying. The policy and procedures must be included in student and employee handbooks and in the district improvement plan, and, as noted at CQA(LEGAL), a district must also post on its Web site the procedure for reporting bullying as established in the local bullying policy.

FFI(LOCAL) POLICY CONSIDERATIONS

Recommended changes to this local policy incorporate new requirements on bullying:

- The definition of bullying has been revised to match the statutory definition.
- A new provision prohibits retaliation by a student or district employee against any person who reports bullying, serves as a witness, or otherwise participates in an investigation. Examples of retaliation are included in the policy.
- Provisions regarding student reports clarify that the purpose of the report is for the student to obtain assistance and intervention.
- New provisions clarify that alleged bullying may also constitute prohibited conduct, as defined at FFH (discrimination, harassment, and dating violence). If the district official determines that the allegations would constitute prohibited conduct, the investigation will proceed under FFH and must include a determination on both prohibited conduct and bullying.
- A new provision requires that the investigation report include a determination of whether the victim used reasonable self-defense, as based on the new law, which states that a student who is a victim of bullying and who used reasonable self-defense in response to the bullying cannot be subject to disciplinary action.

- New provisions also outline appropriate district actions depending on the type of conduct the investigation reveals.
- Finally, new requirements address publication and distribution of the policy and any accompanying procedures.

FFH(LOCAL) POLICY CONSIDERATIONS

Many of the recommended changes to this local policy are intended to coordinate a district's response when alleged conduct could constitute prohibited conduct, as defined at FFH, and/or bullying, as defined at FFI. Since a district may have additional notification obligations if the conduct also constitutes bullying, the Note at the beginning of the policy now specifies that the district must use FFH and FFI in conjunction in these circumstances.

Recommended revisions also specify that in determining whether alleged conduct constitutes prohibited conduct as defined by the policy, a district official must also determine whether the conduct could constitute bullying, as defined by FFI.

New recommended text requires the investigation report to include a determination of whether prohibited conduct or bullying occurred and outlines the appropriate disciplinary action the district will take depending on what type of conduct the investigation reveals.

Other recommended changes to the policy include the addition of new provisions on gender-based harassment, which includes harassment of a non-sexual nature based on a student's gender or gender stereotyping, including the failure to conform to stereotypical notions of masculinity or femininity.

SPECIAL NOTE ABOUT ADOPTION OF FFH(LOCAL) AND FFI(LOCAL)

Many of the Update 93 recommendations regarding FFH(LOCAL) and FFI(LOCAL) are based on HB 1942, which is effective beginning with the 2012–13 school year. Based on the effective date of HB 1942, some districts may want to implement the Update 93 policy recommendations for FFH(LOCAL) and FFI(LOCAL) effective with the 2012–13 school year so that any current (LOCAL) policies at FFH and FFI are not affected until then. The Update 93 policy recommendations are being provided at this time so districts can begin development of next year's student handbooks and codes of conduct.

If you wish to delay the effective date of the Update 93 recommendations for FFH(LOCAL) and FFI(LOCAL), the board may indicate in the motion for action that the Update 93 changes to FFH(LOCAL) and FFI(LOCAL) are adopted effective on a future date. A suggested motion for board action on Localized Update 93 is as follows:

"I move that the board add, revise, or delete (LOCAL) policies as recommended by TASB Policy Service and according to the Instruction Sheet for TASB Localized Policy Manual Update 93 [with the following changes:]. FFH(LOCAL) and FFI(LOCAL) are adopted effective [insert specific date, not school year]."

FDB(LEGAL) provides new options for a school district to transfer a student who engages in bullying.

FDB(LOCAL) POLICY CONSIDERATIONS

Beginning with the 2012–13 school year, a board may transfer a student who engaged in bullying, in addition to a student who was a victim of bullying. We therefore recommend a revision to the Note in this local policy to refer to transfers of victims of bullying or students "who engaged in bullying."

Student Records

Changes regarding access to education records at FL(LEGAL) include new definitions of "authorized representative" and "education program" and a new provision on record confidentiality by organizations conducting studies for or on behalf of districts. New provisions also clarify that a district may designate as directory information student ID numbers or other unique personal identifiers displayed on a student ID badge only if the number or identifier cannot be used by itself without a PIN, password, or other factor to gain access to education records.

Student Expression

At FNAAL(LEGAL), on distribution of nonschool literature, we have added information from the recent Fifth Circuit Court of Appeals case *Morgan v. Swanson*, in which the Fifth Circuit recognized that private, non-disruptive, student-to-student speech expressing a religious viewpoint is protected under the First Amendment, and a district may not discriminate against a student based on that speech. We have also revised the text of this policy to refer to permissible viewpoint-neutral regulations regarding time, place, and manner limitations and have added a citation to the Fifth Circuit Court of Appeals case *Canady v. Bossier Parish School Board*.

Discipline

Provisions at FOD(LEGAL) addressing permissive expulsion for persistent misbehavior in a DAEP have been revised to permit expulsion when a student engages in serious misbehavior despite documented behavioral interventions. “Serious misbehavior” is defined as deliberate violent behavior that poses a direct threat to the health or safety of others; extortion; coercion; and conduct that constitutes the offense of public lewdness, indecent exposure, criminal mischief, hazing, or harassment of a student or district employee. Effective with the 2012–13 school year, “persistent” misbehavior is no longer a reason for discretionary expulsion for a student assigned to a DAEP. These changes will be reflected in the 2012 *TASB Model Student Code of Conduct*, to be issued in March.

**More
Information**

For further information on these policy changes, refer to the policy-by-policy Explanatory Notes—customized for each district’s policies—and the policies themselves, found in your localized update packet.