

Vantage Points

A Board Member's Guide to Update 83

Vantage Points is an executive summary of the TASB Localized Update prepared specifically for board members. The topic-by-topic outline and the thumbnail descriptions focus attention on key issues to assist local officials in studying 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 83 ***Vantage Points*** and the Localized Update 83 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.

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A major component of Update 83 is the redevelopment of policies that address discrimination, harassment, and retaliation and of those that govern complaints and grievances. Other important issues include notice requirements for districts that annualize employee compensation and new Family and Medical Leave Act provisions on leave involving the military service of employees or their family members.

All bills referenced in this document are from the 80th Legislative Session.

Discrimination, Harassment, and Retaliation

The two types of employment discrimination are now defined at DAA(LEGAL):

- Disparate treatment occurs when a district's practices are overtly discriminatory.
- Disparate impact occurs when a district's practices are neutral on their face but have a discriminatory effect.

The same policy now also specifically identifies evaluating employees based on gender stereotypes as a form of illegal sex discrimination.

DIA, DAA, FFH, and FB(LOCAL) POLICY CONSIDERATIONS:

The local policies relating to discrimination, harassment, and retaliation have been extensively revised at this update. DIA(LOCAL) is for employees (including former employees and applicants for employment) and FFH(LOCAL) addresses the welfare of students. A recommended provision containing a general statement of nondiscrimination has been added to both policies, as have definitions for the types of prohibited conduct. Procedures that individuals must follow for reporting and that districts must follow for investigating allegations of prohibited conduct have been amended. The reporting and investigation obligations apply even if the complainant or district official is unsure whether the allegations rise to the level of conduct prohibited by law; this ensures that all allegations are addressed, regardless of severity.

Contact information for the district officials to whom individuals may report—the Title IX coordinator; ADA/Section 504 coordinator, if applicable; and superintendent—is now listed in DIA(LOCAL) and FFH(LOCAL). For ease of use, a separate section has been created for each coordinator's contact information. DAA(LOCAL), which previously listed the contact information for employee reports, has been deleted, while contact information for student reports of harassment and discrimination, previously listed only at FB(LOCAL), has been repeated at FFH(LOCAL).

Complaints and Grievances

DGBA, FNG, and GF(LOCAL) POLICY CONSIDERATIONS:

The local policies governing complaints and grievances—DGBA for employees, FNG for students and parents, and GF for members of the public—have also been extensively revised at this update. Significant recommended changes include the following:

- The district's response to a Level One or Level Two hearing is now considered timely if it is postmarked by U.S. Mail on or before the response deadline. Previously, a response was considered timely if it was postmarked by the response deadline *and* received by the complainant within three days of that deadline, which was hard for the district to establish.
- It is now clearly stated in the policy that the district, as well as the complainant, may be represented by counsel at any level of the complaint process.
- Details have been added to clarify the provisions regarding access to and submission of documents by the complainant and administration. In resolving a complaint, administrators may now consider any relevant documents, even if those documents were not submitted by the complainant for the Level One conference, and a complainant may access any documents the administrator considers by requesting a copy of the record. In addition, if the administration wishes to introduce new evidence at a Level Three hearing, the administration must provide notice of the nature of that evidence to the complainant before the hearing.
- After the filing of a Level Two or Level Three appeal, the administrator must forward the record of the complaint to the next level.
- The policy clarifies that at the Level Three hearing the board may include an opportunity for the complainant and the administration to each make a presentation and provide a rebuttal, as well as an opportunity for questioning by the board.

Employee Issues

Annualized Compensation

Included at DEA(LEGAL), new IRS rules apply to districts that have employees who work less than 12 months but are paid on an annualized basis. To avoid the assessment of tax penalties against employees, districts that annualize compensation must make a formal election, through local policy or other means, to pay employees on an annualized basis and must provide employees with notice of the payment arrangement before the school year begins.

DEA(LOCAL) POLICY CONSIDERATIONS:

Recommended provisions have been added to this local policy requiring the district to pay all salaried employees over 12 months, regardless of the number of months the employee works. As indicated above, districts are required to provide notice regarding payment arrangements before employees begin work for the new school year, and failure to provide such notice could result in a substantial tax liability to the employee. **Therefore, it is critical that the district adopt and distribute policy DEA(LOCAL) to employees before they report to work for the 2008–09 school year.**

Also added to this policy are provisions addressing how employees who separate from employment before the end of the 12-month payment period will be paid their remaining wages.

Family and Medical Leave

The Family and Medical Leave Act (FMLA) has been expanded to incorporate new provisions of the National Defense Authorization Act of 2008 addressing servicemembers. These provisions have been included at DEC(LEGAL):

- An employee may now take up to 12 weeks of continuous or intermittent FMLA leave because of a “qualifying exigency” caused by a family member’s active military duty or deployment.
- The new provisions also allow an employee to take leave to care for a spouse, child, parent, or next of kin who is a servicemember who has incurred a serious injury or illness in the line of duty.

We have not updated the corresponding DEC(LOCAL) policy at this update since federal regulations have not been finalized. Look for a revised DEC(LOCAL) to be issued later this year.

SBEC Reports

At DF(LEGAL), new State Board for Educator Certification (SBEC) rules have been added to address requirements for reporting sexual conduct or a romantic relationship between an SBEC certificate holder and a student or minor. The policy also now includes an extensive definition of “solicitation of a romantic relationship.”

Student Issues

Bullying

FFI(LOCAL) POLICY CONSIDERATIONS:

We have created a separate recommended policy at this update to address complaints of bullying. FFI(LOCAL) outlines the procedures a student or parent should follow to report bullying and the process that the district will use to resolve a complaint of bullying. If at any point in the investigation it is determined that bullying was based on a protected characteristic (race, color, religion, gender, national origin, or disability) and thus could constitute illegal harassment or discrimination, the school administrator is directed to immediately proceed in accordance with the discrimination, harassment, and retaliation policy at FFH(LOCAL).

Physical Activity

New physical activity requirements for middle school students have been included at EHAC(LEGAL). These requirements, from SB 530 and effective for the 2008–09 school year, require students in grades six through eight to participate in physical activity for 30 minutes per day or, if the district uses block scheduling, for a total of 225 minutes in a two-week period. The commissioner is in the process of adopting rules regarding exemptions.

EHAC(LOCAL) POLICY CONSIDERATIONS:

The Texas Administrative Code provision requiring a school district to adopt a local policy on physical activity exemptions has been deleted from the law. Accordingly, policy EHAC(LOCAL) is recommended for deletion from the manual. If the commissioner adopts rules allowing school districts to implement physical activity exemptions for students, those exemptions may be included in the student handbook or other communications; there is currently no requirement to include exemptions in the policy manual.

Health Curriculum

Also at EHAC(LEGAL), a provision from HB 2176, effective with the 2008–09 school year, requires districts to include in their high school health curriculum a parenting and paternity awareness program developed by the State Board of Education.

Athletic Activities

Several provisions from SB 82, effective with the 2008–09 school year, have been added to FM(LEGAL). The district must post contact information for complaints about student athletic activities and provide students and parents with copies of the UIL Parent Information Manual and certain provisions of the Education Code on safety for extracurricular activities.

New provisions also require that students participating in extracurricular athletic activities complete safety training and that the superintendent maintain training compliance records; the UIL may impose sanctions against a campus that is out of compliance. Similar provisions requiring safety training for staff are included at DMA(LEGAL).

Text has also been added that prohibits encouraging dangerous athletic techniques and requires certain safety precautions at all practices and competitions.

Discipline

FO(LOCAL) POLICY CONSIDERATIONS:

This policy now includes a recommended provision that gives the district the option of making the Student Code of Conduct available electronically on the district’s Web site rather than or in addition to distributing hard copies.

Your FO(LOCAL) policy reflects your district’s previous choice regarding whether or not to use corporal punishment as a discipline management technique. For districts that do include corporal punishment in their policy as a discipline option, we recommend revising the provision specifying which district employees may administer corporal punishment. To give the district maximum flexibility, the policy now simply specifies the “principal or designee,” allowing a principal to designate another administrator or teacher of the same sex as the student, if desired.

Access to Student Records

FL(LOCAL) POLICY CONSIDERATIONS:

The definition of “school officials” who will have access to student education records has been broadened to include parents or students who serve on a district committee, such as when a parent serves on the language proficiency assessment committee for a student who is not the parent’s child, or who assist another school official in performing a task. These recommended changes are based on material published by the federal office that administers FERPA.

Special Education

At EIF(LEGAL), graduation requirements for special education students have been revised to reflect changes in federal law.

Automatic Admission

Provisions from HB 3826, effective with admissions for the 2008–09 academic year, have been added at EIC(LEGAL). In addition to existing criteria for automatic admission to institutions of higher education, a student must now complete the Recommended or Advanced/Distinguished Achievement High School Program (unless the required courses are not available to the student) or must achieve certain minimum scores on the ACT or SAT.

Prohibited Paging Devices

Districts that choose to prohibit possession of paging devices on school property or at school events may no longer include amateur radios in their restrictions. This exemption, reflected at FNCE(LEGAL), comes from SB 11.

District Operations

As authorized by a constitutional amendment approved by voters in May 2007, HB 5 changes the calculation used to determine the tax ceiling for persons 65 and over or disabled persons. This bill provides tax relief to these persons by reducing the tax amounts they are obligated to pay in proportion to the recent school tax rate reductions implemented by the 79th Legislature, 3rd called session.

Ad Valorem Taxes

District Police Departments

Two existing statutory provisions regarding district police departments have been added at CKE(LEGAL). The first requires district police departments and officers to file reports on traffic and pedestrian stops, unless certain exceptions are met.

The second prohibits racial profiling and requires district police departments to establish a written departmental policy on racial profiling. This requirement is an obligation of the district’s police department, not the school board, so it

is not necessary to include the departmental provisions in the district's board policy manual.

If an allegation of racial profiling is made against a district police officer, the school district must provide the officer with a copy of any video or audio recording of the stop if the officer requests it.

Textbooks

Provisions regarding textbook funding have been moved from EFAA(LEGAL) to CMD(LEGAL), where other provisions on purchasing instructional materials are housed. At EFAA(LEGAL), provisions from HB 188 have been added regarding the textbook selection process. The new provisions require that, if a district purchases a supplemental textbook for a course in the foundation curriculum, the district must certify to TEA that the supplemental textbook, in combination with any other textbooks or supplemental textbooks, covers each of the Texas Essential Knowledge and Skills (TEKS) for the course.

Board Elections

Provisions that prohibit spending district funds for political advertising and electioneering, previously included in the policy manual at CCA(LEGAL), have been repeated at BBB(LEGAL) since they are also relevant to elections. The separate requirements for election orders and election notices have been clarified at BBB(LEGAL), as well, and several expired election provisions have been deleted, including a provision exempting districts from the requirement to provide voting machines accessible to voters with disabilities at trustee elections.

Public Information Requests

Revised Texas Administrative Code provisions, reflected at GBAA(EXHIBIT), now prohibit school districts from including the cost of fringe benefits in personnel charges associated with processing a public information request. Charges may now include the actual cost to manipulate data.

In addition, school districts that accept credit card payments for copies of public information may now recover any transaction fees charged by the credit card company.

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.