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# Vantage Points

A Board Member's Guide to Update 71



Policy Service

**Your  
Viewpoint?**

***Vantage Points*** is an executive summary of the TASB Localized Update prepared for Board members. The topic-by-topic outline and thumbnail descriptions survey the landscape, focusing attention on key issues of the update in preparation for the study of specific changes found in the policies. The Explanatory Notes, found in the update packet, provide greater detail and address every individual policy affected by this update.

**PLEASE NOTE:** This Update 71 ***Vantage Points*** and the Localized Update 71 packet may not be considered as legal advice and are not intended as a substitute for the advice of the Board's own legal counsel.

Comments in ***Vantage Points*** do not substitute for the policy language and should not be relied upon in place of a thorough review of the policies themselves.

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

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

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## The Big Picture

Faced with an immense funding shortfall and the complexities and financial implication of ensuring an adequate and equitable system of school funding, the **78th Legislature** deferred school funding to a possible special session next year and authorized studies of key aspects in the interim. That said, the Legislature was anything but inattentive to public education: of the **1946 education-related bills, 420** were **enacted into law**.

Incorporating relevant material into your localized policy manual will be an immense undertaking that we are parsing into two post-legislative updates:

- **Update 71**—focusing on high profile legislation, legislation that requires board action within a defined time frame, and legislation that requires (LOCAL) policy adoption.
- **Update 72**—focusing entirely on updating (LEGAL) policies.

**Please note:** As you work your way through Update 71, you'll also find a scattering of (LEGAL) and (LOCAL) policies affected by the state's implementation of the No Child Left Behind Act and the related McKinney-Vento Act pertaining to homeless children.

## State Legislation Board Elections

Revisions to board elections are at **BBB(LEGAL)** and include the following:

- Effective January 1, 2004, HB 1777 authorizes a **Board** to change its **election** date from **May to November** or **vice versa**. During the transition following a change, the next regular election would be suspended in favor of the new date, and the terms of the current Board members would be extended by that number of months. HB 1549 extends the **deadline** for Board **action** to change the date to **December 31, 2004**.
- HB 1549 also moves the **May board election date**—the date used by a large majority of boards—from the **first to the third Saturday** of May. HB 1 from the Third Called Session of the 78th Legislature subsequently **reinstates** the first Saturday, **beginning in 2005**.
- Districts using the **November 2003 election date** should be aware of a **conflict** between HB 1549 and HB 1695 regarding the **time frame** for **canvassing votes**. Although HB 1549 changes the time period for canvassing votes, it does not become **effective** until **January 1, 2004**. Affected districts should seek guidance from their legal counsel and TASB Legal Services.
- HB 1695 requires that **certification procedures** for **elected Board** members be **extended** to **unopposed candidates** as well, while SB 1215 changes the **time frames** for **calling an election** and for **candidates to file**. The **order** for **signing** the "officer's statement" and the **administration** of the oath of office have also been clarified.

## "Teacher" Appraisals

HB 1440 provides the circumstances under which districts are **not required** to **appraise a "teacher" annually**. Because "teacher" is defined in the Education Code as a "certified educator," this provision has been placed at

**DNA(LEGAL)** for classroom teachers and at **DNB(LEGAL)** for other certified educators. Administrators, however, must be appraised every 15 months. Appraisals are not required annually if:

- the **teacher agrees** in writing;
- the most recent **evaluation** earned an overall rating of at least “**proficient**” or the equivalent with no areas of **deficiency**; and
- another appraisal is performed within **five years**.

**BOARD DECISION POINT:**

As TASB Policy, Human Resource, and Legal Services pondered the possible components of **teacher appraisal** text to suggest for **DNA(LOCAL)** and **DNB(LOCAL)**, far more questions than answers were raised. We created and posted at [www.tasb.org/policy](http://www.tasb.org/policy) a *Starting Points* policy development tool kit to assist districts. The *Starting Points* is intended to help districts ask themselves the necessary questions to develop an appropriate policy. It includes such points as:

- **frequency** of appraisals.
- alternate **methods**.
- frequency or methods by **categories**—would the frequency and/or method be the same for all teachers or would it be determined by such things as:
  - ratings of “proficient” or “exceeds expectations”?
  - ratings at those levels for a certain number of years?
  - tenure in the District, the campus, or the assignment?
  - rating of the campus?
  - certification in the area of the assignment?
  - exclusion of those on probationary status or district permit?
- appraisals from other districts.

At a minimum, TASB recommends that the District design an performance review process that provides:

- procedures for supervisors to obtain direct information about job performance with observation of the duties and responsibilities;
- methods to document attendance, accidents, achievement, work output, problems, incidents, etc.; and
- an informal conference.

For more comprehensive guidance, we strongly encourage districts to review the *Starting Points* information. For assistance in drafting your District’s policies, please contact your Policy Consultant/Analyst.

**Travel  
Reimbursement**

The good news of HB 898 is district access to the discounted travel planning services of the Texas Building and Procurement Commission. The bad

news of HB 898 is the **limit on travel reimbursement**: districts may not reimburse amounts greater than those permitted by the Comptroller's state travel allowance guide. Although the legislative sponsors have indicated that they did not intend for those limits to be imposed on school district officers and employees, the law stands, nevertheless, and has been added to **BBG(LEGAL)**—for Board members—and **DEE(LEGAL)**—for employees. Recent Comptroller's guidelines provide some clarification:

- **Hotel costs** that were **previously contracted** for events such as those sponsored by TASB are reimbursable in accordance with the District's **pre-existing policy**. For future events, however, legal counsel should be consulted.
- **Board members, Superintendents**, or administrators designated to **substitute for these officials** are considered "**key administrators.**" As such, they may be reimbursed up to **twice the state rate**.
- Although districts are subject to the state rate limitations, they are **not required** to adhere to the other **rules, reporting, etc.**, for state employees.

The limitation imposed by HB 898 is **temporary**, however. HB 7, enacted by the Third Called Session of the 78th Legislature, repeals this limitation, but not immediately: expenses incurred between September 1, 2003, (the effective date of the limitation) and January 10, 2004, (the effective date of the repeal) should be reimbursed in accordance with the state limits.

***BOARD DECISION POINT:***

**BBG(LOCAL)** and **DEE(LOCAL)** have been significantly streamlined and clarified. The revised policies address reimbursement within the applicable limits, authorization for expense reimbursement, and receipts and include a pointer to administrative procedures for the reimbursement process. If revisions to this text are needed for your District, please advise your Policy Consultant/Analyst.

**Administering of Medication**

As reflected in **FFAC(LEGAL)**, previous statute protected from liability the District and its employees who administered medication when requested in writing by the parent and when it appeared to be in the properly labeled, original container. The provisions of SB 930 **expanded** that **immunity** by permitting administration of medication from a **properly labeled unit dosage container** filled from the properly labeled, original container by a registered nurse or another qualified District employee, as determined by District policy.

HB 1406 addresses **psychotropic drugs, prohibiting** a District employee from making related **recommendations** or suggesting any particular **diagnosis**. Employees are also **prohibited** from using a parent's refusal to consent to a psychiatric evaluation or examination or to the use of psychotropic drugs to **exclude** a student **from class** or a **school-related activity**. The bill clarifies, however, that **appropriate referrals** under **Child Find** and

**discussions** regarding the student's behavior or academic progress with the **parent or another employee** are **permissible**.

**BOARD DECISION POINT:**

The suggested text at **FFAC(LOCAL)** answers the HB 1406 requirement for adoption of a local policy on **psychotropic drugs**, addressed above. **Anabolic steroids** have been added to the list of prohibited substances for administration by school employees, and it is now specified that dietary substances of **any type** are prohibited.

Most districts do not state in policy that a physician's order is necessary for administration of a medication beyond ten days. For the fewer than ten percent of districts that do, and in recognition of the authority of **health-care professionals other than physicians** to write **prescriptions** or to extend the administration of a prescription medication, the text has been expanded in that regard.

As noted above, **immunity** is provided under **specific circumstances** for the administration of **prescription medication**. State law is **not clear** as to whether or not the immunity applies to the administration of **nonprescription medications** or **herbal and dietary supplements**. Even when prescriptions for such substances are written by health-care professionals authorized to do so, **registered nurses** employed by the schools are obligated by their **state licensing rules** to **administer only** those medications and treatments about which they are knowledgeable and for which there is a body of research literature available.

Please confer with your District's health-care staff and medical advisor to confirm that the provisions accurately reflect the District's intentions and practices before acting on this policy.

**Employee  
Credentials**

A number of legislative changes regarding **employee credentials** have been incorporated into **DBA(LEGAL)**.

- HB 411 requires SBEC to establish a **master science teacher certificate** for elementary, middle, and high school grade levels. To encourage teachers to pursue the certification, **grants for stipends** will be available for certain teachers at high-need campuses.
- SB 741 added the "head director of a school marching band" to the list of employees who must have current certification in **CPR and first aid**.
- SB 1109 requires SBEC to promptly **revoke** an employee's **Chapter 21 certification** when the **employee is convicted** of a felony under Penal Code Title 5, Offenses Against the Person, or of an offense for which registration as a sex offender is mandated and the victim is under 18 years of age.
- HB 1022 dictates that **failure to obtain** either SBEC certification or permit or the **expiration** of a temporary certification **voids** an employee's Chapter 21 **contract** with the District.

## Chapter 21 Contracts

Districts have been given some **flexibility** in regard to **Chapter 21 probationary contracts** by:

- HB 558, which authorizes districts to employ by **probationary contract** a **teacher** who **returns** after at least a **two-year lapse** in service, notwithstanding the fulfillment of any previous probationary contracts. See **DCA(LEGAL)**.
- SB 1394, which authorizes districts to employ **experienced principals and teachers** by Chapter 21 **term contracts** when a probationary contract would otherwise be required by Chapter 21. See **DCA(LEGAL)** and **DCB(LEGAL)**.

## Investments

As a result of **SB 1318**, districts can now take advantage of **security lending programs**, commonly used for major retirement systems of the state. See **CDA(LEGAL)**.

### ***BOARD DECISION POINT:***

To permit the use of **security lending programs**, this option has been added, at **CDA(LOCAL)**, to the list of investment options from which the District will choose. While considering the addition of this new investment option, the District might also want to perform the annual review of its investment policy as required by law.

When undertaking the required **annual review**, the Board should solicit **input** from the District's investment counselor, its attorney, and others with **expertise** in investment management, giving special attention to:

- **APPROVED INVESTMENT INSTRUMENTS**—To provide maximum flexibility, the TASB recommended policy lists **all investment types** provided by law.
- **MONITORING MARKET PRICES**—The **methods/resources** to be used by the investment officer in monitoring the market prices of investments must be identified in **policy**, and must occur **at least quarterly**.
- **FUNDS/STRATEGIES**—An investment strategy must be defined for **each type of fund**.

The review and any resulting changes must be documented by Board resolution.

## Purchasing

The legislative changes in regard to districts' purchasing authority have been incorporated into **CH(LEGAL)**. Although previously denied to districts by an attorney general's opinion, purchases made through the **formation of a political subdivision corporation** under the Local Government Code as a "best value" method for purchases over \$25,000 are now authorized by HB 2528 and HB 3459. In addition, HB 2425 allows districts to satisfy competitive bidding requirements by participating in purchase contracts through the State Council on Competitive Government.

In accordance with SB 850, the District may now **refuse** to enter into **contracts** with persons **indebted to the District**, including apparent low bidders and otherwise successful proposers.

### Complaints

HB 1949 makes a **teacher's grade final**. As stated at **DGBA(LEGAL)** and **FNG(LEGAL)**, the Board can **change only** a grade it determines to be arbitrary, erroneous, or inconsistent with the District's grading policy. Although the Board's decision is final, this provision does not preclude appeals related to eligibility for participating in extracurricular activities.

In accordance with SB 930, a person cannot file suit against a **professional employee** until he or she has exhausted the **District's remedies** for resolving the complaint. For this purpose, the bill's definition of professional employee has been included at **FNG(LEGAL)**.

### Military Leave

With SB 1669, the legislature provided districts statutory authority to allow an employee on **military leave** to use any personal or sick leave available under former law or provided by local policy during **active service**. For **short-term** leaves, the bill protects the employee's paid leave, adding personal time and sick leave to the existing statute; SB 1800 clarifies, for this purpose, that the **15-day limit** on the leave applies to **workdays**. Both provisions have been added to **DEC(LEGAL)**.

#### **BOARD DECISION POINT:**

SB 1669 also authorizes the District to provide **paid military leave** for **active service**, but only through **Board-adopted policy**, as part of the consideration of employment. If the District wishes to add such a provision to **DEC(LOCAL)**, please send the appropriate text to your Policy Consultant/Analyst.

### Paper Reduction

In addition to charging the Board with limiting **redundant requests for information**, HB 3459 limits the **types of written reports** that can be required of teachers to those listed at **DLB(LEGAL)**. Furthermore, the Board is directed to review the classroom teacher paperwork requirements and to see that, where feasible, such tasks are transferred to noninstructional staff.

#### **BOARD DECISION POINT:**

The suggested text at **DLB(LOCAL)** retains language that was repealed by the Legislature. It addresses the **paperwork reduction** responsibilities previously assigned to the District-level planning and decision-making committee and now assigned to the **Superintendent**.

For districts that have a Web site, the production cost of providing **employment policies** to term contract employees has been alleviated with the **Internet** requirement of HB 912. See **DCB(LEGAL)**.

## Pledges

Included at **EC(LEGAL)** are the following SB 83 mandates for each day of instruction:

- Recitation of the **pledges of allegiance** to the United States and Texas flags. Upon written request from the parent, a child must be excused from reciting a pledge.
- A **one-minute moment of silence**, following the pledges, during which time any silent activity that does not interfere with or distract other students is permissible.

## Closed Board Meetings

The following exceptions for **closed meetings** were added to the Texas Open Meetings Act and can be found at **BEC(LEGAL)**:

- From HB 1226, any issue requiring disclosure of a student’s personally identifiable information, not including directory information that parents had not previously opted to withhold. A parent may request an open meeting, however.
- From SB 984, deliberation that includes the medical or psychiatric records of a plan applicant in districts that administer a public insurance, health, or retirement plan.
- From HB 9, matters of “homeland security” as defined by the Local Government Code, although a tape recording must be made.

## Tuition

HB 1619, as noted in **FDA(LEGAL)**, reset the cap on tuition to be the **greater**—rather than the lesser, as before—of the amount specified by the **Education Code** or the limit imposed by **Commissioner’s rule**.

### **BOARD DECISION POINT:**

Based on the blending of two processes in TEA’s recently updated District and Campus Planning and Decision Making Resource Guide, the recommended policy at **BQ(LOCAL)** now **links parental involvement** in both **Title I** and campus and District **planning and decision making**.

## Internet Use

State legislation, through HB 854, now conditions state funding or loans from the **Telecommunications Infrastructure Fund** on the adoption and implementation of an **Internet safety policy**, essentially mirroring the requirement of the federal Children’s Internet Protection Act. The specific policy requirements have been added to **CQ(LEGAL)**.

### **BOARD DECISION POINT:**

Most districts have adopted a policy at **CQ(LOCAL)** that includes CIPA requirements for federal funding. For those districts, revisions are unnecessary.

**Transportation**

CNA(LEGAL) includes state legislation—from HB 3459—authorizing Boards to make a **grandparent’s residence** eligible for **transportation services**, as long as the residence is on an approved route.

**Board  
Appointments**

The revised **BBC(LEGAL)** includes the HB 2931 authorization for Boards to consider constituent representation as one of the factors for determining who will be appointed to fill a vacancy on the Board. The bill also requires that this must be done in accordance with the Board’s adopted procedures.

**BOARD DECISION POINT:**  
Although it is not necessary to adopt a policy to house Board procedures, if your Board chooses to do so, please advise your Policy Consultant/Analyst.

**Nonlegislative  
Issues**

**McKinney-Vento  
Act—Homeless  
Students**

The McKinney-Vento Homeless Education Assistance Improvements Act, reauthorized by the No Child Left Behind Act, requires the District to serve **homeless children** according to their best interests, regardless of whether the District receives McKinney-Vento funds or not. The requirement to adopt policies and practices to ensure that homeless children are **not stigmatized or segregated** on the basis of their homeless status has been placed at **FB(LEGAL)** and **FDC(LEGAL)**.

Other provisions from the McKinney-Vento Act, superseding the narrower state provisions regarding homeless students and imposing broad obligations on districts, have been placed at **FDC(LEGAL)** and include:

- definitions for **“best interest,” “homeless children or youth,”** and **“school of origin.”**
- District authorization to require the parent or guardian to provide **contact information.**
- District requirements to:
  - provide **services comparable** to those for other students enrolled at the same school.
  - coordinate** services with **local social services** and **other agencies.**
  - provide a **notice of the rights** of homeless children.

Districts must **review** and **revise** any **policies** that could act as a **barrier** to enrollment of homeless children. Such children must:

- receive **expedited enrollment** despite any **documentation gaps** or **disputes** over school selection or enrollment.
- be **enrolled** at a campus in the **same** manner as **nonhomeless children** in the same **attendance area.**
- be permitted to **remain** in their **school of origin** if feasible when they **become homeless.**

- be permitted to **remain** in their **school of origin** for the remainder of the school year if feasible when, having been homeless, they **become permanently housed**.

From the McKinney-Vento Act, **CNA(LEGAL)** includes an obligation to provide transportation for a **homeless student** to avoid the disruption of being transferred to a new campus, despite the student’s change in residence. That is,

- if a student continues to **live in the District**, but in a different attendance zone, the District must **provide transportation** to and from the **school of origin**.
- if a student **moves out of the District**, both the sending and receiving districts are to **share the cost** and **responsibility of transportation** to the **school of origin**.

***BOARD DECISION POINT:***

The suggested **FDC(LOCAL)** text was developed in conjunction with **TEA** and the **Texas Homeless Education Office** at the University of Texas at Austin. Responsibility is assigned to the:

- **Superintendent** for appointing an appropriate staff person as the liaison for homeless students.
- **principal** for notifying the homeless liaison within one day of the enrollment of a homeless student and of any complaint as noted below.
- homeless **liaison** for being involved in student, parent, or guardian complaints regarding the admission, placement, or services provided for a homeless student.

The policy also provides **criteria** to be considered in determining **placement** in the school of origin or elsewhere and, upon request of the parent or guardian, provides for **transportation** through the end of the school year.

Before TASB can create a policy at **FFC(LOCAL)**, each district must submit to its Policy Consultant/Analyst the **name, title, address, and phone number** of the **liaison for homeless students**.

**No Child Left Behind**

The key provisions of the **No Child Left Behind Act** were **initially** placed in one policy, **EHBD(LEGAL)**, to facilitate comprehension of the provisions of the act while awaiting the state’s response regarding its responsibilities. At this update, however, the provisions specific to other policy topics have been **moved** to the **topic-appropriate codes**:

<u>CODE</u>	<u>TOPIC</u>
<b>FDB</b>	transfer option from a low-performing school
<b>CNA</b>	transportation for such students
<b>DBA</b>	“highly qualified” standard for teachers and certification for paraprofessionals

**Transfers**

A new policy at **FDD(LEGAL)** addresses the NCLBA requirement for districts receiving ESEA funds to permit a student to **transfer from** a school identified as “**persistently dangerous.**” A student who becomes a **victim of violent crime at school** must be given the same option.

***BOARD DECISION POINT:***

In response to the **transfer** requirement noted above and TEA’s recently issued policy requirements, the suggested **FDD(LOCAL)** addresses:

- time lines and **procedures** for **requesting** such a transfer.
- time lines for **processing** and **approving** the requests.
- **length** of the approved transfer and procedures for **renewal.**
- collection and maintenance of certain **data.**

Districts with multiple campuses at any grade level, as well as districts that have made transfer agreements with other districts for this purpose, need a (LOCAL) policy for guidelines.

If any revisions to the text are necessary for your District, or if the District needs but did not receive (LOCAL) policy text, please contact your Policy Consultant/Analyst.

**Note:** If TASB Policy Service records indicate that a district is a single-campus district, a policy will not be included in the district’s update packet.

**Looking Ahead**

On the horizon is Update 72 later this fall, dealing exclusively with updating (LEGAL) policies to reflect legislative changes. Current plans include a **late fall** issue of **Update 72.** Primary content will be the remainder of the (LEGAL) policies prompted by recent state legislation.