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**AUSTIN INDEPENDENT SCHOOL DISTRICT**  
*Special Projects and Intergovernmental Relations*

Memorandum

To: All District Administrators

From: Dave Duty

Subject: District Policy Update 73

Date: September 30, 2005

Below is a recap of the changes that were made to local District policies, regulations and exhibits as a result of Board approval on September 12, 2005 as a result of TASB Policy Update 73. These changes have already been integrated into our policies on-line.

Additional information on these changes will be made in the next few weeks on an as needed basis in targeted communications.

Please share this information with you staff as is appropriate.

BBFA (EXHIBIT) ETHICS  
CONFLICT OF INTEREST

These exhibits have been revised in light of the Attorney General's opinion (GA-123) that a superintendent vested with final authority becomes a public official and will be subject to the same constraints as Board members.

- Exhibit A provides a form by which the local public official—a term that may now include superintendents as well as Board members—may disclose his or her substantial interest (or the substantial interest of someone related to the official in the first degree) in a business entity or real property.
- Exhibit B may be used for the “public servant”—a term that may include superintendents, Board members, and Board candidates—to disclose his or her interest in property that is to be acquired with District funds.

BED (LOCAL) BOARD MEETINGS  
PUBLIC PARTICIPATION

We have reorganized for clarity the provisions on LIMIT ON PARTICIPATION and in the process, have removed redundancies and gathered all text addressing one topic together in the policy.

Also, consistent with the discussion in the explanatory note for BED(LEGAL), we have deleted the prohibition regarding complaints against employees. Instead, the COMPLAINTS AND CONCERNS section now states that, although persons wishing to address the Board during public comment may use that time to express comments or concerns, persons seeking resolution of an issue should be referred to one of three “sign post” policies:

- DGBA, for complaints brought by an employee
- FNG, for complaints brought by a student or parent
- GF, for complaints by a member of the public

Each of these policies defines the general process to follow and points to specialized processes when appropriate (e.g., instructional materials, harassment/abuse, contract actions).

DISRUPTION has been modified to give the presiding officer discretion to request assistance in removing a person who persists in disrupting a Board meeting.

BJCF (LOCAL) SUPERINTENDENT  
NONRENEWAL

TASB attorneys’ periodic review of nonrenewal policies in light of nonrenewal cases, evolving statutes, and recommendations from the TASB Council of School Attorneys suggests the following revisions to this policy, pertaining to the nonrenewal of the Superintendent’s contract:

- Refined language at items 8 and 9, dealing with alcohol and drug use.
- More explicit language at item 14, relating to a disability not otherwise protected by law.
- New language at item 16, regarding any breach by the Superintendent of his or her contract.
- Broadened language at item 18, regarding assault on an employee, student, parent, or other person.
- Language at item 19 regarding use of profanity.
- Language at item 21 regarding omission of employment information.
- A new item 25, pertaining to withholding information from a parent or employee.
- Clarified language at item 26, referencing “good cause.”

We have removed from the list an item regarding “immorality,” a difficult-to-define description of actions that would likely be more directly addressed by one of the other REASONS provided.

At HEARING PROCEDURE, on page 3, we have added a new item 1 to address reasonable time limits for presentations and closing arguments.

CRF (LOCAL) INSURANCE AND ANNUITIES MANAGEMENT  
UNEMPLOYMENT INSURANCE

The language of this policy has been streamlined. Determining the content and timing of the letters and identifying recipients are administrative functions best addressed in administrative procedures.

DFBB (LOCAL) TERM CONTRACTS  
NONRENEWAL

As noted at BJCF(LOCAL), Legal Service’s periodic review of nonrenewal policies in light of nonrenewal cases, evolving statutes, and recommendations from the TASB Council of School Attorneys suggests a number of revisions to this policy, pertaining to the nonrenewal of term contract employees other than the Superintendent.

Changes recommended for the various reasons for nonrenewal include:

- Removal of unnecessary wording from the item pertaining to incompetency or inefficiency.
- Clarified language dealing with inability to maintain discipline.
- A new item regarding excessive absences.
- Refined language at items dealing with alcohol and drug use.
- More explicit language relating to a disability not otherwise protected by law.
- Rephrased language at the item regarding a breach of contract.
- Clarified text dealing with a lack of student progress.
- A new item dealing with endangerment of students or others.
- Broadened language regarding assault on an employee, student, parent, or other person.
- New language regarding use of profanity.
- Added text regarding omission of employment information.
- An updated item pertaining to certification requirements.
- A new item relating to “highly qualified” status required by the NCLBA.
- Clarified language pertaining to withholding information from a parent or employee.
- A new item addressing any reason voiding the employment relationship.
- Clarified language referencing “good cause.”

Removed from the list is an item regarding “immorality,” a difficult-to-define description of actions that would likely be more directly addressed by one of the other REASONS provided.

At HEARING PROCEDURE, on page 4, a new item 1 has been added to address reasonable time limits for presentations and closing arguments.

Your locally developed provisions, found in the first paragraph at REASONS requiring due process of law in the implementation of this policy, and the requirement for RECOMMENDATIONS FROM ADMINISTRATORS to be submitted for legal review, are retained, unchanged.

DGA (LOCAL) EMPLOYEE RIGHTS AND PRIVILEGES  
FREEDOM OF ASSOCIATION

Recent case law speaking to nonstudent use of school facilities prompted TASB Legal and Policy Services to release a *Starting Points* policy development tool kit on nonschool use of school facilities and distribution of nonschool literature on school property. That tool kit distinguished between access by nonschool groups (addressed at GKD and GKDA) and access by school-related users, such as employee organizations (addressed at this policy code), student organizations (addressed at FM), and parent organizations (addressed at GE). None of these school-related groups would be subject to the provisions of GKD or GKDA.

The enclosed (LOCAL) policy addresses:

- Key rights and responsibilities of an employee's involvement in organization activities, and
- Use of school facilities, with approval of the appropriate administration, for meetings of organizations representing professional, paraprofessional, and/or support employees.

DH (LOCAL) EMPLOYEE STANDARDS OF CONDUCT

Revisions to this policy include:

- At ALCOHOL AND DRUGS, we have clarified the prohibition to include manufacture, possession, or dispensing a prohibited substance.
- Text at EXCEPTIONS explains the application of that provision.
- At MORAL TURPITUDE, we have moved text addressing acts involving public intoxication, previously included at item 4, to a separate item 5 for clarity.
- Text at DRESS AND GROOMING more accurately reflects action taken recently by the Superintendent and Cabinet to establish professional standards of dress.

Your locally developed provisions at DISCIPLINARY ACTION and REMOVAL FROM WORK SITE are retained, unaltered.

FEA (LOCAL) ATTENDANCE  
COMPULSORY ATTENDANCE

WITHDRAWAL FOR NONATTENDANCE has been revised to more closely align with statute and to refer readers to FEA(LEGAL) for withdrawal provisions applicable to students 18 or older with more than five unexcused absences in a semester.

Your locally developed provisions in the first paragraph, requiring that students in violation of the compulsory attendance law be reported to the principal or designee, are retained unchanged.

**FFAB (EXHIBIT) HEALTH REQUIREMENTS AND SERVICES  
IMMUNIZATIONS**

The Texas Department of Health maintains a chart of required immunizations, with its qualifying footnotes, at [http://www.tdh.state.tx.us/immunize/docs/school/require\\_k-12.pdf](http://www.tdh.state.tx.us/immunize/docs/school/require_k-12.pdf). Because of the clarity with which the chart presents this information and since this chart is revised to keep current with TDH rule changes, we are replacing our own charting of regulatory requirements with the text of the TDH-published chart.

To provide manual users a clear line of sight regarding the regulations, we have included the Internet URL for this chart in the FFAB(LEGAL) policy in this packet. For *Policy On Line* users, this URL will be an active link to the Web site; hardcopy users may access the chart by entering the URL in their Web browsers.

**FFG (EXHIBIT) STUDENT WELFARE  
CHILD ABUSE AND NEGLECT**

Revisions to the exhibit are as follows:

- New text has been added—with the question “Are there any restrictions on reporting?”—to reflect Education Code provisions (from SB 930, passed during the 78th Regular Session) that prohibit an employee from using or threatening to use a parent’s refusal to consent to administration of a psychotropic drug, or any other psychiatric or psychological testing or treatment of a child, as the sole basis for making a report of neglect, unless the employee believes there is a serious risk to the child. [See FFAC(LEGAL) in your District’s localized policy manual]
- Also added is the Web address for reporting suspected child abuse or neglect to the Child Protective Services division of the Texas Department of Family and Protective Services (formerly the Department of Protective and Regulatory Services).

**FM (LOCAL) STUDENT ACTIVITIES**

USE OF DISTRICT FACILITIES affirms that school-sponsored student groups are permitted to use District facilities with prior administrative approval. Such use is controlled by this policy, rather than FNAB where use by nonschool-sponsored groups is addressed.

Your locally developed provisions regarding REMOVING SUSPENSION OF ELIGIBILITY FOR SECONDARY STUDENTS are retained, but have been clarified by reformatting the order. Item 3 is now item 2. Your locally developed text at POLITICAL ACTIVITY is unchanged.

FNC (LOCAL) STUDENT RIGHTS AND RESPONSIBILITIES  
STUDENT CONDUCT

The code list appearing at BEHAVIORAL STANDARDS has been updated to reflect structural and content changes in the F and G sections.

FNCF (LOCAL) STUDENT CONDUCT  
ALCOHOL AND DRUG USE

The laws defining alcohol and drug use have been expanded greatly over the past several years and now address such issues as abusable glue, paints, and volatile chemicals, and alcohol-free zones—issues that were not contemplated when this (LOCAL) policy was enacted.

The concepts expressed by this policy are addressed in significantly greater detail in law [see FNCF(LEGAL)] and are covered in the Student Code of Conduct. Portions of this (LOCAL) policy, that were found on page 2, are no longer in tune with statutory requirements and may be unduly limiting; we recommend their deletion.

We have retained, unchanged, your locally developed program for alcohol and drug abuse education and prevention.

FNG (LOCAL) STUDENT RIGHTS AND RESPONSIBILITIES  
STUDENT AND PARENT COMPLAINTS/GRIEVANCES

As noted at DGBA(LOCAL), the complaint policies have been extensively revised based upon feedback from members of the TASB Council of School Attorneys as well as local districts. The changes are designed to more closely align DGBA(LOCAL), for employees, FNG(LOCAL), for students or parents, and GF(LOCAL), for others. In addition to reducing confusion among processes, the revisions sidestep to some extent time line complications presented by holidays, provide more time for individuals to take the first and subsequent steps in the formal complaint process, and further clarify language.

New to the three policies are the following:

- GUIDING PRINCIPLES, on page 1, encourages informal resolution of concerns or complaints at the lowest possible administrative level and in a timely fashion. If an informal approach is unsuccessful, the parent or student bringing the complaint may initiate the formal process defined in this policy. The parent or student has 15 days from the date he or she first becomes aware of the action prompting the complaint to file a formal complaint; during this period the parent or student may continue to work toward informal resolution and may withdraw the formal complaint at any time.
- At DEFINITIONS, on page 2, new provisions address:
  - Appropriate means of FILING a timely complaint form or appeal notice.
  - The nature of the administrative RESPONSE, now required in writing at Levels One and Two of the process.

- The designation of a REPRESENTATIVE for the student or parent and a statement that, if the student or parent designates a representative shortly before a scheduled conference or hearing, the District may reschedule in order to include its own attorney.

The number of days for filing complaints or appeals and for administrative responses has been extended throughout the policy.

- Under UNTIMELY FILINGS, on page 3, a complaint or appeal may now be dismissed if filed late. The parent or student may appeal the dismissal at the same level, but, in line with guidance provided by the Commissioner, the appeal is limited to the issue of timeliness.
- At COMPLAINT FORM the language also addresses the need to attach documentation to the form and the possibility that incomplete filings may be dismissed; complaints may be refiled, however, so long as the time period for filing has not expired. The section retains your locally developed requirement that the complaint state the solution sought.
- At LEVEL ONE, language guides the parent or student in filing the complaint with the appropriate administrator and in identifying the appropriate level for initiating the complaint. This section retains your requirement that the principal or other appropriate administrator include in the written response to the student or parent a recitation of the facts as determined at Level One and the decision, as well as a copy of the policy, with Level Two procedures highlighted.
- LEVEL TWO provisions, on page 4, note that a student or parent appealing the Level One result must file an appeal notice on a form provided by the District. Issues addressed at Level Two are limited to information presented at Level One.
- As reflected at LEVEL THREE, the District will determine whether the Level Three complaint will be presented in open or closed meeting, as permitted by the Texas Open Meetings Act and other applicable law. This language replaces previous language that defaulted to closed meetings for complaints against the Board or employees (unless the person who was the subject of the complaint opted for an open proceeding). TASB attorneys note that the law regarding application of the various—and occasionally competing—exceptions to the Texas Open Meetings Act is very complex, as demonstrated by decisions of the Attorney General and Commissioner of Education. While the deleted statement regarding closed meetings for complaints against employees was an accurate reflection of one of many possible closed meeting exceptions, boards should consult local legal counsel to determine, on a case-by-case basis, whether a closed meeting is appropriate.

Also in this section, we have clarified the manner of the recording—a critical record should the parent or student pursue legal action or appeal to the Commissioner of Education. The Board must make a separate record of its Level Three proceedings, and the record must include, at a minimum, “oral testimony or argument”—the language of statute—but the Board’s deliberations need not be recorded.

A significant change has occurred regarding the Board’s decision. Previously, policy required the Board to declare its decision orally (in the parent or student’s presence) or in writing at any time up to and including the next regularly scheduled Board meeting. New language clarifies that, if the Board does not reach a decision by the

end of the next regularly scheduled meeting, the administrative decision in Level Two is upheld.

On page 5, your locally developed provisions permitting the Board to hear the complaint based on oral argument or upon written submission at the Board's discretion are unchanged. The last paragraph regarding written submission also is retained, unaltered.

**FOC (EXHIBIT) STUDENT DISCIPLINE PLACEMENT IN A DISCIPLINARY ALTERNATIVE EDUCATION SETTING**

Your locally developed exhibits, including Exhibit B, Exhibit C, and Exhibit D, have been revised as submitted on July 30, 2004.

Exhibit F has been revised to reflect changes in law from the 78th Regular Session, to more closely track statutory language, and to more fully present Title 5 offenses that rise to the level of a felony.

Changes from the 78th Regular Session are as follows:

- At Section 20A.02, Trafficking of Persons, a new felony offense added by HB 2096
- At Section 21.12, Improper Relationship between an Educator and a Student, a new felony offense added by HB 532
- At Section 22.01, Assault against...“a person the actor knows is a security officer” (added by HB 565) and “a person who contracts with the government to perform a service at a correctional facility or a secure correctional or detention facility for juveniles” (added by HB 2525)
- At Section 22.07, Terroristic Threat, “if the actor causes pecuniary loss of \$1,500 or more to the owner of a building, room, place, or conveyance,” added by HB 616
- Section 22.11: Harassment by Persons in Certain Correctional Facilities, revisions in designations of sites by HB 274

For completeness, additional felony offenses found in Title 5 have been added:

- Section 20.05: Unlawful Transport
- Section 22.015: Coercing, Soliciting, or Inducing Gang Membership

**GBA (EXHIBIT) PUBLIC INFORMATION PROGRAM ACCESS TO PUBLIC INFORMATION**

The Texas Building and Procurement Commission, on the recommendation of the Open Records Steering Committee, has amended rules governing the cost of copies of public information. The amendments are essentially clarifying but also establish charges for various electronic media. This exhibit has been revised to reflect the rule changes.

**GE (LOCAL) RELATIONS WITH PARENT ORGANIZATIONS**

We have revised this policy for clarity. Please note that the groups described are permitted to use District facilities with the approval of the appropriate administrator; such

use is not governed by GKD, as would be the case for other parent groups that are not District-affiliated.

Your locally developed provision requiring that all purchases must comply with the District's purchasing policies and administrative regulations is unchanged.

## GF (LOCAL) PUBLIC COMPLAINTS

As noted at DGBA(LOCAL) and FNG(LOCAL), we have extensively revised the complaint policies here and at those codes, based upon feedback from members of the TASB Council of School Attorneys as well as local districts. The changes are designed to more closely align all three complaint policies. In addition to reducing confusion among processes, the revisions sidestep to some extent time line complications presented by holidays, provide more time for individuals to take the first and subsequent steps in the formal complaint process, and further clarify language.

New to the three policies are the following:

- **GUIDING PRINCIPLES**, on page 1, encourages informal resolution of concerns or complaints at the lowest possible administrative level and in a timely fashion. If an informal approach is unsuccessful, the individual bringing the complaint may initiate the formal process defined in this policy. The individual has 15 days from the date he or she first becomes aware of the action prompting the complaint to file a formal complaint; during this period the individual may continue to work toward informal resolution and may withdraw the formal complaint at any time.
- At **DEFINITIONS**, provisions newly address:
  - Appropriate means of **FILING** a timely complaint form or appeal notice.
  - The nature of the administrative **RESPONSE**, now required in writing at Levels One and Two of the process.
  - The designation of a **REPRESENTATIVE** for the complainant and a statement that if a complainant designates a representative shortly before a scheduled conference or hearing, the District may reschedule in order to include its own attorney.
  - The meaning of **DAYS** as District business days, rather than calendar days as before. In addition to this definitional shift, the number of days for filing complaints or appeals and for administrative responses has been extended throughout the policy.
- Under **UNTIMELY FILINGS**, on page 2, a complaint or appeal may now be dismissed if filed late. The complainant may appeal the dismissal at the same level, but, in line with guidance provided by the Commissioner, the appeal is limited to the issue of timeliness.
- At **COMPLAINT FORM** the language also addresses the need to attach documentation to the form and the possibility that incomplete filings may be dismissed; complaints may be refiled, however, so long as the time period for filing has not expired.

- At LEVEL ONE, on page 3, language guides the individual in filing the complaint with the appropriate administrator and in identifying the appropriate level for initiating the complaint.
- LEVEL TWO provisions, on page 4, note that an individual appealing the Level One result must file an appeal notice on a form provided by the District. Issues addressed at Level Two are limited to information presented at Level One.
- As reflected at LEVEL THREE, the District will determine whether the Level Three complaint will be presented in open or closed meeting, as permitted by the Texas Open Meetings Act and other applicable law. This language replaces previous language that defaulted to closed meetings for complaints against the Board or employees (unless the person who was the subject of the complaint opted for an open proceeding). TASB attorneys note that the law regarding application of the various—and occasionally competing—exceptions to the Texas Open Meetings Act is very complex, as demonstrated by decisions of the Attorney General and Commissioner of Education. While the deleted statement regarding closed meetings for complaints against employees was an accurate reflection of one of many possible closed meeting exceptions, boards should consult local legal counsel to determine, on a case-by-case basis, whether a closed meeting is appropriate.

Also in this section, we have clarified the manner of the recording—a critical record should the complainant pursue legal action or appeal to the Commissioner of Education. The Board must make a separate record of its Level Three proceedings, and the record must include, at a minimum, “oral testimony or argument”—the language of statute—but the Board’s deliberations need not be recorded.

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