

BYLAWS OF TARRANT COUNTY COLLEGE

ARTICLE I. BOARD LEGAL STATUS POWERS, DUTIES, RESPONSIBILITIES

A. RESPONSIBILITIES

BAA (LEGAL)

The Board, being composed of lay members, shall exercise the traditional and time-honored role as it has evolved in the United States and shall constitute the keystone of the governance structure. In this regard, the Board:

1. Is expected to preserve institutional independence and to defend its right to manage its own affairs through its chosen administrators and employees.
2. Shall enhance the public image of the College District under its governance.
3. Shall interpret the community to the campus and interpret the campus to the community.
4. Shall nurture the College District under its governance to the end that it achieves its full potential within its role and mission.
5. Shall insist on clarity of focus and mission of the College District under its governance.

Education Code 51.352(a)

B. EXTENT OF STATE AND LOCAL CONTROL

BAA (LEGAL)

All authority not vested by the laws of the state in the Coordinating Board or in the Central Education Agency shall be reserved and retained locally in the College District or in the Board as provided in the laws applicable. *Education Code 130.002*

C. POWERS AND DUTIES

**BAA (LEGAL)
BDE (LEGAL)
BFI (LEGAL)**

Because the Board is a body corporate, members can perform no valid act except as a body at meetings properly convened and conducted. *Toyah ISD v. Pecos-Barstow*, 466 S.W.2d 377 (Tex. Civ. App. –San Antonio, 1971, no writ); *Buchele v. Woods*, 528 S.W.2d 95 (Tex. Civ. App. – Tyler, 1975, no writ)

The Board shall have specific powers and duties imposed by statutes of the state. The Board has the legal power and duty to:

1. Governance. Be governed in the establishment, management, and control of the College District by the general laws governing the establishment, management, and control of independent school districts insofar as the general law is applicable. *Education Code 130.084*
2. Tuition and Fees. Set and collect any amount of tuition, rentals, rates, charges, or fees the Board considers necessary for the efficient operation of the College District, except that a tuition rate set under this subsection must satisfy the requirements of Section Education Code Section 54.051(n). The Board may set a different tuition rate for each program, course, or course level offered by the College District, including a program, course, or course level to which a provision of Section 54.051 applies, as the Board considers appropriate to reflect course costs or to promote efficiency or another rational purpose. *Education Code 130.084*
3. Provide Direction. Provide policy direction for the College District and adopt such rules, regulations, and bylaws as the Board deems advisable. *Education Code 51.352(b), 130.082(d)*
4. Establish Goals. Establish goals consistent with the College District's role and mission. *Education Code 51.352(d)*
5. Tax Rate. Adopt a tax rate each fiscal year as required by *Tax Code 26.05*. *Education Code 130.121*
6. Tax Collection. Levy and collect taxes and issue bonds. *Education Code 130.121(a), 130.122(a)*
7. Annual Budget. The Board shall approve an itemized current operating budget on or before September 1 of each year. *19 TAC 13.42*
8. Annual Audit. Have the accounts audited in accordance with the approved financial reporting system. *Education Code 61.065*
9. Annual Report. Submit the required annual reports to the governor and comptroller. *Gov't Code 403.013*
10. Bequests and Gifts. Receive bequests and donations or other monies or funds coming legally into their hands. *Education Code 11.151(a)*
11. Endowment Fund. Establish an endowment fund outside the state treasury in a depository selected by the Board. *Education Code 130.007*
12. Depository. Select a depository for College District funds. *Education Code 51.003*
13. Elections. Order elections as required by law. *Education Code 130.082(f), 130.122(b)*

14. Eminent Domain. Exercise the right of eminent domain to acquire property. *Education Code 11.155, 130.084; Atty. Gen. Op. M-700 (1970)*

15. Appoint Chancellor. Appoint the Chancellor, evaluate the Chancellor, and assist the Chancellor in the achievement of performance goals. *Education Code 51.352(d)*

In the event of a vacancy in the office of the Chancellor, the Board shall employ a successor thereto at the earliest convenient opportunity, seeking whatever assistance is desired from professional consultants, employment firms, faculty, students, ex-students, present administrators of the College District, and the like. The Board shall announce the name, background, and qualifications of any individual it selects and employs by use of an executive search committee. An "executive search committee" is a committee formed by an act of the Board with the primary purpose of evaluating and assessing candidates and nominees for the position of chief executive officer of the College District. *Education Code 51.913*

The name of an applicant for Chancellor is excepted from disclosure under Chapter 552, Government Code.

The Board must give public notice of the name or names of the finalists being considered for Chancellor at least 21 days before the date of the meeting at which a final action or vote is to be taken on the employment of the person. *Gov't Code 552.123*

16. Employment of Personnel. Appoint or employ agents, employees, and officials as deemed necessary or advisable to carry out any power, duty, or function of the Board; employ a dean, or other administrative officer; upon the Chancellor's recommendation, employ faculty and other employees of the College District. *Education Code 130.082(d)*

17. Passing Resolutions or Orders. Proceed by and through resolutions or orders adopted or passed by the Board. The affirmative vote of a majority of all Board members shall be required to adopt or pass a resolution or order. *Education Code 130.082(d)*

18. Rentals, Rates, and Charges. Be authorized to fix and collect rentals, rates, charges, or fees from students and others for the occupancy, use, or availability of all or any of its property, buildings, structures, activities, operations, or facilities, in such amounts and in such manner as may be determined by the Board. *Education Code 130.123(c)*

19. Property Acquisition. Execute, perform, and make payments under a contract for the use or purchase or other acquisition of real property or an improvement to real property. *Local Gov't Code 271.004*

20. Lease of Personal Property. Execute, perform, and make payments under contracts, which may include leases, lease with option(s) to purchase, or installment purchase, with any person for the use, acquisition, or purchase of any personal property, or the financing thereof. The contracts shall be on terms and conditions that are deemed appropriate by the Board in accordance with state law. *Local Gov't Code 271.005*

21. Lawsuits. Sue and be sued. *Education Code 11.151(a); 130.084*
22. Communicate with Coordinating Board. Ensure that its formal position on matters of importance to the College District is made clear to the Coordinating Board when such matters are under consideration by the Coordinating Board. *Education Code 51.352(d).*
23. Admission Standards. Set campus admission standards consistent with the role and mission of the College District and considering admission standards nationwide having a similar role and mission, as determined by the Coordinating Board. *Education Code 51.352(d)*
24. Management of College District Funds. Act as a fiduciary in the management of funds under the control of institutions subject to the Board's control and management. *Education Code 51.352(e)*

D. BOARD MEMBERSHIP AND METHOD OF PERFORMING DUTIES BAA (LOCAL)

The Board is the governing Board of the College District. The Board is comprised of seven members, elected by the voters of Tarrant County, and is the final authority for adoption of District policies, budget, faculty and staff appointments, construction, and for all other matters of District development and operation. It has the power to levy taxes for the construction of physical facilities and for District operation within the authority granted to it by state law and the voters of the District.

As the governing body, the Board performs its duties as follows:

1. It acts as a policy-making body. It legislates to make these policies effective.
2. It acts as an appraisal body, sitting in judgment upon recommendations that may come to it through the Chancellor, or his or her designated representative of the College, or from a duly authorized Board committee.
3. Only the Chancellor shall be directly responsible to the Board. All other administrators, faculty members, and other employees shall be indirectly responsible to the Board through the Chancellor, and they shall report or confer with the Board only through the Chancellor.
4. Pass upon architect's plans for buildings which have been authorized, after approval by the Chancellor.
5. Act as a body of final appeal for the College personnel and the public in cases which may be appealed from the decision of administrative officers. For such appeals, the appeals shall be made to the Board President in the manner prescribed in *TCCD's Policy and Regulation Manual* DGBA(LOCAL).
6. Approve tuition and fees in accordance with statutory requirements.

E. BOARD AUTHORITY

BBE (LOCAL)
BBE (LEGAL)

The Board has final authority to determine and interpret the policies that govern the College District and, within the limits imposed by other legal authorities, has complete and full control of the College District.

1. Transacting Business. Official Board action shall be taken only in meetings that comply with the Open Meetings Act. The affirmative vote of a majority of all Board members shall be required to transact business. [See BD] Each action of the Board supported by the majority is binding on the whole Board.
2. Individual Authority For Committing The Board. Board members as individuals shall not exercise authority over the District, its property, or its employees. Except for appropriate duties and functions of the Board President, an individual member may act on behalf of the Board only with the express authorization of the Board. Without such authorization, no individual member may commit the Board on any issue.
3. Individual Access To Information. An individual Board member, acting in his or her official capacity, shall have the right to seek information pertaining to District fiscal affairs, business transactions, governance, and personnel matters. If the information is requested from a person or office other than the Chancellor, the Chancellor should be copied on of informed of the request. Information should be furnished within two business days, whenever possible, and in addition shall be sent to all other Board members. Information furnished to Trustees may include information that property may be withheld from members of the general public in accordance with the Public Information Chapter of the Government Code. [See *TCCD Policy and Regulation Manual GAA*]
4. Limitations. Individual members shall not have access to confidential student records unless the member is acting in his or her official capacity and has a legitimate educational interest in the records in accordance with policies. (See *TCCD Policy and Regulation Manual FJ* (LEGAL) and (LOCAL))
5. Requests For Reports. Directives to the Chancellor or other College District staff regarding the preparation of reports that will, in the opinion of the Chancellor, require excessive staff time or expense shall be authorized by action of the Board.
6. Confidentiality. At the time Board members are provided access to confidential records or to reports compiled from such records, the Chancellor or other District employee shall advise them of their responsibility to comply with confidentiality requirements.
7. Referring Complaints. If employees, students, or citizens bring a concern or complaint to an individual Board member, he or she shall refer them to the Chancellor or designee, who shall proceed according to appropriate Board policy. [See *TCCD Policy and Regulation Manual DGBA, FLD, and GB*]

When the concern or complaint directly pertains to the Board's own actions or policy, for which there is no administrative remedy, the Board member may request that the issue be placed on the agenda.

8. Staff Authority. Except as authorized by these policies, no employee or agent shall have the authority to bind the College District contractually.
9. Fiduciary. Each Board member shall have the legal responsibility of a fiduciary in the management of funds under the control of colleges subject to the Board's control and management. *Education Code 51.352(e)*

ARTICLE II. BOARD MEMBERS ORIENTATION AND TRAINING

A. TRAINING

BBD (LEGAL)

A member of the Board of an institution of higher education, the members of which are elected, may attend a training program as established by law. *Education Code 61.084(a)*

The training program must include a seminar held annually in Austin to be conducted by the staff of the Coordinating Board. The staff of the Coordinating Board may obtain assistance from representatives of the office of the attorney general, the office of the comptroller of public accounts, the office of the state auditor, and the Texas Ethics Commission, and from other training personnel the Coordination Board deems necessary. The Coordinating Board by rule may prescribe an alternative training program for members of governing boards for whom attendance at a seminar held in Austin would be a hardship. The alternative training program need not be in the form of a seminar but must include substantially the same information included in the seminar held in Austin. *Education Code 61.084(b)*

The content of the instruction at the training program shall focus on the official role and duties of the Trustees and shall provide training in the areas of budgeting, policy development, and governance.

Topics covered by the training program may include:

1. Auditing procedures and recent audits of public community/junior colleges;
2. The enabling legislation that creates public community/junior colleges;
3. The role of the Board and the relationship between the Board and the College District's administration, faculty and staff, and students;
4. The mission statements of public community/junior colleges;
5. Disciplinary and investigative authority of the Board;

6. The requirements of the open meetings law, Chapter 551, Government Code, and the open records law, Chapter 552, Government Code;
7. The requirements of conflict of interest laws and other laws relating to public officials;
8. Any applicable ethics policies adopted by public community/junior colleges or the Texas Ethics Commission; and
9. Any other topic relating to higher education the Board considers important.

Education Code 61.084(d)

The Coordinating Board shall provide training for Board members as required by law. The Coordinating Board may prescribe an alternative training program as permitted by law. A registration fee shall be paid by seminar participants in an amount adequate to cover the costs incurred by the Coordinating Board and other state agencies in providing the program. Such amount shall be determined prior to each seminar.

Chapter 1, Subchapter A, Section 1.9 of the Texas Administrative Code provides for the training of members of governing boards and trustees for public institutions of higher education; however, members of community/junior college governing boards may not be required to attend a training session. *Education Code 61.084; 19 TAC 1.9, 9.25*

B. SPECIFIC OPEN MEETINGS TRAINING

BBD (LEGAL)

Within 90 days after taking the oath of office, each Board member shall complete a course of training regarding the responsibilities of the Board and its members under Chapter 551 of the Texas Government Code. The office of the attorney general may provide the training and may also approve other acceptable sources of training. *Gov't Code 551.005*

C. SPECIFIC OPEN RECORDS TRAINING

BBD (LEGAL)

Within 90 days after taking the oath of office or assuming duties as a public official, each Board member and public information coordinator shall complete a course of training regarding the responsibilities of the College District and College District officers and employees under Chapter 552 of the Texas Government Code. The office of the attorney general may provide the training and may also approve other acceptable sources of training.

A Board member may designate a public information coordinator to satisfy the training requirements of Government Code 552.012 for the Board member if the public information coordinator is primarily responsible for administering the responsibilities of the Board member or College District under Government Code Chapter 552.

The Chancellor or designee shall fulfill the responsibilities of the public information coordinator and shall receive, on behalf of the Board members, the training specified by Government Code 552.012.

D. FEES

BBD (LEGAL)

A Trustee shall pay from private funds the required fee and the Trustee's costs of travel, including transportation, lodging, and meals. Neither the required fee nor a Trustee's travel costs shall be reimbursed from appropriated funds, other than grants and donations of private funds available for that purpose. *Education Code 61.084(c)*

E. CONVENTIONS AND WORKSHOPS

BBD (LEGAL)

Board members may attend regional, state, or national conventions or workshops without such gatherings being construed as "meetings" under the Open Meetings Act. However, no formal action shall be taken at such conventions or workshops concerning College District business, and any discussion of public business shall be merely incidental to the convention or workshop. *Gov't Code 551.001(4)*

**ARTICLE III.
ETHICS**

A. STATEMENT OF ETHICS

BDF (LOCAL)

All Board members will strive to improve community college education, and to that end shall adhere to the following ethical standards:

1. Attend all regularly scheduled Board meetings insofar as possible, and become informed concerning issues to be considered at those meetings.
2. Bring about desired changes through legal and ethical procedures, upholding and enforcing all applicable statutes, regulations, and court decisions pertaining to community colleges.
3. Work with other Board members to establish effective Board policies and to delegate authority for the administration of the College District to the Chief Executive Officer.
4. Work with other Board members to establish effective policies and practices prohibiting unlawful discrimination, including conduct that constitutes sexual harassment.
5. Recognize that the Board should endeavor to make policy decisions only after full discussion at publicly held Board meetings.
6. Render all decisions based on the available facts and my independent judgment, and refuse to surrender that judgment to individuals or special interest groups.

7. Encourage the free expression of opinion by all Board members, and seek systematic communications between the Board and students, staff, and all elements of the community.
8. Communicate to other Board members and the Chief Executive Officer expressions of public reaction to Board policies and college programs.
9. Remain informed about current educational issues by individual study and through participation in programs providing needed information, such as those sponsored by the Texas Association of Community Colleges, the American Association of Community Colleges, and the Association of Community College Trustees.
10. Support the employment of those persons best qualified to serve as college staff, and insist on a regular and impartial evaluation of all staff.
11. Avoid being placed in a position of conflict of interest, and refrain from using one's Board position for personal or partisan gain.
12. Take no private action that will compromise the Board or administration, and respect the confidentiality of information that is privileged under applicable law.
13. Remember always that the first and greatest concern must be the educational welfare of the students attending the college.

REFERENCE: derived from *National School Boards Association*

B. DEFINITIONS

BBFA (LEGAL)

1. "Substantial Interest." A person has a "substantial interest" in a business entity if any of the following is the case:
 1. The person owns at least:
 - a. Ten percent of the voting stock or shares of the business entity, or
 - b. Either ten percent or \$15,000 of the fair market value of the business entity.
 2. Funds received by the person from the business entity exceed ten percent of the person's gross income for the previous year.

A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

The local public official is considered to have a substantial interest if a person related in the first degree by either affinity or consanguinity to the local public official, as determined under Government Code, Chapter 573, Subchapter B [see DBE], has a substantial interest as defined above.

Local Gov't Code 171.002

2. "Local Public Official." A member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any College District (including a College District), central appraisal district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature. *Local Gov't Code 171.001(1)*

3. "Business entity." A sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. *Local Gov't Code 171.001(2)*

4. "Local government officer." A member of the governing body of a College District: a director, superintendent, administrator, president, or other person designated as the executive officer of the College District; an employee of a College District who has the authority to approve contracts on behalf of the College District, including a person designated as the representative of the College District for purposes of Chapter 271, and with respect to whom the College District has, in accordance with Local Government Code 176.005, extended the requirements of Local Government Code 176.003 and 176.004. *Local Gov't Code 176.001(4)*

5. "Family member." A person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code, except that the term does not include a person who is considered to be related to another person by affinity only as described by Government Code 573.024(b). *Local Gov't Code 176.001(2)*

6. "Records administrator." The director, superintendent, or other person responsible for maintaining the records of the College District or another person designated by the College District to maintain statements and questionnaires filed under Local Government Code 176 and perform related functions. *Local Gov't Code 176.001(5)* [See CPC]

7. "Investment income." Dividends, capital gains, or interest income generated from:

- a. A personal or business:
 - (i) Checking or savings account,
 - (ii) Share draft or share account, or
 - (iii) Other similar account;
- b. A personal or business investment; or
- c. A personal or business loan.

Local Gov't Code 176.001(2-b)

C. SUBSTANTIAL INTEREST AFFIDAVIT AND ABSTENTION **BBFA (LEGAL)**

If a local public official or a person related to a local public official in the first degree by either affinity or consanguinity has a substantial interest in a business entity or in real property, the local public official before a vote or decision on any matter involving the business entity or the real property, shall file an affidavit with the official Board recordkeeper stating the nature and extent of the interest and shall abstain from further participation in the matter if:

1. In the case of a substantial interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
2. In the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

Local Gov't Code 171.004

D. CONTRACTS PERMITTED **BBFA (LEGAL)**

A Board may contract with a business entity in which a Trustee has a substantial interest if the Trustee follows the disclosure and abstention procedure set out above. *Atty. Gen. Op. JM-424 (1986)*

E. MAJORITY CONFLICT **BBFA (LEGAL)**

If a Trustee is required to file and does file an affidavit, that Trustee shall not be required to abstain from further participation in the matter or matters requiring such an affidavit if a majority of the Trustees are likewise required to file and do file affidavits of similar interests on the same official action. *Local Gov't Code 171.004*

F. SEPARATE VOTE ON BUDGET **BBFA (LEGAL)**

A Board shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a Trustee has a substantial interest. The affected Trustee shall not participate in that separate vote, but may vote on a final budget if he or she filed the affidavit and the matter in which he or she is concerned has been resolved. *Local Gov't Code 171.005*

G. VIOLATIONS **BFA (LEGAL)
BBFA (LEGAL)**

Except as provided above, the local public official shall not knowingly:

1. Participate in a vote or decision on a matter involving a business entity or real property in which the local public official has a substantial interest if it is reasonably foreseeable that an action on the matter will have a special economic effect on the

business entity or value of the property that is distinguishable from the effect on the public.

2. Act as surety for a business entity that has a contract, work, or business with a College District.

3. Act as surety on any official bond required of an officer of a College District.

Local Gov't Code 171.003

H. VIOLATIONS

BBFA (LEGAL)

A local government officer commits a Class C misdemeanor if the officer knowingly violates this law. It is an exception to the application of the penalty that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after receiving notice from the College District of the alleged violation. *Local Gov't Code 176.003-.004*

I. VOIDABLE ACTIONS

BBFA (LEGAL)

The finding by a court of a violation of Local Government Code Chapter 171 does not render an action of a Board voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed without the vote of the person who violated the chapter. *Local Gov't Code 171.006*

J. CONFLICTS DISCLOSURE STATEMENT

BBFA (LEGAL)

A local government officer shall file the required conflicts disclosure statement, as adopted by the Texas Ethics Commission, with respect to an applicable vendor if the vendor enters into a contract with the College District or the College District is considering entering into a contract with the vendor; and the vendor:

1. Has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that a contract has been executed or the College District is considering entering into a contract with the person; or
2. Has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$250 in the 12-month period preceding the date the officer becomes aware that such a contract has been executed; or the College District is considering entering into a contract with the vendor.

A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

1. Given by a family member of the person accepting the gift;
2. A political contribution as defined by Title 15, Election Code; or

3. Food, lodging, transportation, or entertainment accepted as a guest.

A local government officer shall file the conflicts disclosure statement with the records administrator of the College District not later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

K. INTERNET POSTING REQUIREMENT

BBFA (LEGAL)

A College District that maintains an Internet Web site shall provide access on the College District's Internet Web site to the conflicts disclosure statements and questionnaires required to be filed with the records administrator. *Local Gov't Code 176.009*

L. AFFIDAVIT DISCLOSING INTEREST IN PROPERTY

BBFA (LEGAL)

If a public servant has a legal or equitable interest in any property that is to be acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant shall file an affidavit as follows:

1. The affidavit shall be filed with the county clerk(s) of the county or counties in which the property is located and of the county in which the public servant resides within ten days before the date on which the property is to be acquired by purchase or condemnation.
2. The affidavit must:
 - a. State the name of the public servant and the public office title or job designation held or sought.
 - b. Fully describe the property.
 - c. Fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest and the date the interest was acquired.
 - d. Include a verification of the truth of the information in the affidavit.
 - e. Include an acknowledgment of the same type required for recording a deed in the deed records of a county.

Gov't Code 553.002, 553.003

M. DEFINITION OF PUBLIC SERVANT - GOVERNMENT CODE

BBFA (LEGAL)

BBFB (LEGAL)

"Public servant" shall mean a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as:

1. A candidate for nomination or election to public office, or
2. An officer, employee or agent of government.

Gov't Code 553.001, Penal Code 1.07(a)(41)(A), (E)

N. ADDITIONAL DISCLOSURE:

BBFA (EXHIBIT)

The conflicts disclosure statement required of members of the Board and the College President by Local Government Code 176.003-.004 is available on the Texas Ethics Commission Web site at <http://www.ethics.state.tx.us/forms/CIS.pdf>.

O. RESTRICTIONS ON PUBLIC SERVANTS – PENAL CODE

BBFB (LEGAL)

Prohibited activities are covered by, but are not limited to the following:

1. Bribery. A public servant shall not intentionally or knowingly offer, confer, agree to confer on another, solicit, accept, or agree to accept a benefit:
 - a. As consideration for the public servant's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant.
 - b. As consideration for a violation of a duty imposed on the public servant by law.
 - c. That is a political contribution as defined by Title 15 of the Election Code or an expenditure made and reported as a lobbying expense in accordance with Government Code, Chapter 305, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion, if such exercise of official discretion would not have been taken or withheld but for the benefit.

"Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

Penal Code 36.01(3), 36.02

2. Illegal Gifts. A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions shall not solicit, accept, or agree to accept any benefit from a person the public servant knows is interested in or likely to become interested in any such transactions of a College District. *Penal Code 1.07(a)(41)(A), (E), 36.08(d)*

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt

charitable organization formed for educational, religious, or scientific purposes. *Penal Code 36.08(i)*

“Illegal gifts to public servants” does not apply to:

- a. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a public servant;
- b. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
- c. A benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:
 - (1) The benefit and the source of any benefit in excess of \$50 is reported in the statement; and
 - (2) The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;
- d. A political contribution as defined by Title 15, Election Code;
- e. An item with a value of less than \$50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;
- f. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or
- g. Food, lodging, transportation, or entertainment accepted as a guest and, if the done is required by law to report those items, reported by the done in accordance with that law.

Penal Code 36.10

- 3. Honoraria And Expenses. A public servant commits a class A misdemeanor offense if he or she solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for his or her official position or duties. However, a public servant is not prohibited from accepting transportation and lodging expenses or meals in connection with a conference or similar event in which he or she renders services, such as addressing an audience or engaging

in a seminar, to the extent those services are more than merely perfunctory. *Penal Code 36.07*

4. Abuse of Office. A public servant shall not, with intent to obtain a benefit or with intent to harm or defraud another, intentionally or knowingly violate a law relating to the office or misuse College District property, services, personnel, or any other thing of value, belonging to a College District, that has come into his or her custody by virtue of his or her office or employment. *Penal Code 39.02(a)*

“Law relating to the office” means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant or governs the conduct of the public servant. *Penal Code 39.01(1)*

“Misuse” means to deal with property contrary to:

- a. An agreement under which the public servant holds the property;
- b. A contract of employment or oath of office of a public servant;
- c. A law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
- d. A limited purpose for which the property is delivered or received.

Penal Code 39.01(2)

5. Nepotism. Except as provided by law, a public official may not appoint a person to a position that is to be directly or indirectly compensated from public funds or fees of office if:
 - a. The person is related to the public official by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree [see below]; or
 - b. The public official holds the appointment or confirmation authority as a member of a local board and the person is related to another member of the Board by blood or marriage within a prohibited degree.

Gov't Code 573.002, 573.041; Atty. Gen. Op. JC-184 (2000) [See TCCD's Policy and Regulation Manual DBE]

“Public official” shall mean:

- c. An officer of this state or of a College District, county, municipality, precinct, College District, or other political subdivision of this state; or

- d. An officer or member of a Board of this state or of a district, county, municipality, College District, or other political subdivision of this state.

Gov't Code 573.001(3)

The nepotism law governs the hiring of an individual, whether the individual is hired as an employee or an independent contractor. *Atty. Gen. Op. DM-76 (1992)*

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible. *Gov't Code 573.083*

A Trustee of a Board that has delegated to a college president final authority for personnel selection remains subject to the nepotism provisions. *Atty. Gen. Op. GA-415 (2006)*

- 6. Former Trustee Employment. A Trustee of a College District may not accept employment with the College District until the first anniversary of the date the Trustee's membership on the Board ends. *Education Code 11.063*
- 7. Incompatibility of Office. One person may not occupy two legally incompatible offices. Offices are legally incompatible when the faithful and independent exercise of one would necessarily interfere with the faithful and independent exercise of the other. A person may not serve in one branch of government while exercising any powers properly attached to either of the other branches of government. *Texas Constitution, Art. II, Sec. 1; State v. Martin, 51 S.W.2d 815 (Tex. Civ. App. 1932); Thomas v. Abernathy County Line ISD, 290 S.W. 152 Tex. Comm. App. 1927; Turner v. Trinity ISD, 700 S.E.2d 1 (Tex. Ct. App. 1983); Atty. Gen. Op. JM-634 (1987)*
- 8. Textbook Violations – Commissions. A Trustee commits a class B misdemeanor offense if the Trustee receives any commission or rebate on any textbooks used in the schools with which the Trustee is associated. *Education Code 31.152(a)*
- 9. Textbook Violations – Conflict. A Trustee commits a class B misdemeanor offense if the Trustee accepts a gift, favor, or service that:
 - a. Is given to the person or the person's school;
 - b. Might reasonably tend to influence a Trustee in the selection of a textbook; and
 - c. Could not be lawfully purchased with funds from the state textbook fund.

"Gift, favor, or service" does not include staff development, in-service, or teacher training; or instructional materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

Education Code 31.152(b)-(d)

R. BOARD MEMBERS COMPENSATION AND EXPENSES

BBG (LEGAL)
BBG (LOCAL)

Board members shall not receive any remuneration or emolument of office.

Board members shall be entitled to reimbursement for their actual expenses incurred in performing their duties, to the extent authorized and permitted by the Board. *Education Code 130.082(d)*

An officer of a College District who is engaged in official business may participate in the comptroller's contract for travel services. *Gov't Code 2171.055(f); 34 TAC 20.301(b)(2)(E)*

Board members shall be reimbursed for reasonable expenses incurred in carrying out Board business at the Board's request and for reasonable expenses incurred while attending meetings and conventions as official representatives of the Board.

Travel by Board members shall be approved by the Board President and limited to issues that affect the College District. Reimbursement by the business office shall be made upon presentation of appropriate documentation and receipts.

Reimbursement shall be for use of personal car at the mileage rate currently approved by the Board, or the actual cost of commercial transportation, plus parking and taxi fares and expenses for lodging, meals, and other incidental expenses. Board members shall file a statement, and to the extent feasible, attach receipts documenting actual expenses for which reimbursement is requested.

ARTICLE IV.
BOARD OFFICERS AND OFFICIALS

A. ELECTION OF OFFICERS

BCA (LEGAL)

Officers of the Board shall be elected at the first regular meeting of the Board following the regular election of Board members in even-numbered years, or at any time thereafter in order to fill a vacancy. The Board shall be authorized to elect:

1. A President, who shall be a member of the Board.
2. A Secretary, who may or may not be a member of the Board.
3. Any other officers, as deemed necessary or advisable.

Education Code 130.082(d)

B. REORGANIZATION

BCA (LEGAL)
BCA (LOCAL)

In addition to the required post-election organization, the Board may also organize at other times. *Atty. Gen. Op. MW-531 (1982)*

Additional officers of the Board and the District shall be a Vice-President and an Assistant Secretary. Each of such officers shall be elected from any of the members of the Board and for a term of office as such officer corresponding to his or her term of office as Trustee in effect at the time of his or her election as such officer.

Reorganization of the Board may be postponed until the next regular meeting in June, with the approval of two-thirds of those Board members present and voting.

The reorganization of the Board of the College District, with the election of a President, Vice-President, Secretary, and Assistant Secretary, shall take place at the first regular meeting of the Board after the election in May of each election year.

C. DUTIES AND REQUIREMENTS OF BOARD PRESIDENT

BCAB (LEGAL)
BCAB (LOCAL)

The Board President shall:

1. Preside at meetings of the Board.
2. Have a vote the same as the other members.
3. Perform such other duties and functions as are prescribed by the Board.
4. Have general supervision of the management of all affairs of the Board and the District as such;
5. Have the responsibility of seeing to the fulfillment of all orders and resolutions of the Board;
6. Sign all diplomas, and execute and deliver, on behalf of the Board and the District, all contracts and other instruments of whatsoever nature authorized by the Board, unless the execution thereof shall be expressly delegated by the Board to the Chancellor or some other officer;
7. Enforce all rules;
8. Sign all contracts authorized by the Board; and
9. Appoint all committees of the Board not otherwise provided for, of which he and the Chancellor shall be ex officio members

D. DUTIES AND REQUIREMENTS OF VICE-PRESIDENT **BCAC (LOCAL)**

In the absence or inability of the Board President to act, the Vice-President shall perform all of the duties of the Board President and such other duties as may be imposed by the Board.

E. DUTIES AND REQUIREMENTS OF SECRETARY **BCAD (LEGAL)**
BCAD (LOCAL)

The Secretary of the Board shall:

1. Be the official custodian of the minutes, books, records, and seal of the Board.
2. Perform other duties and functions as prescribed by the Board.

Education Code 130.082(d)

The Secretary of the Board shall arrange for an employee of the College to keep an accurate record of Board meetings in a book provided for that purpose. The books, papers, and records of the Secretary shall be the property of the Board, under the custody of the Chancellor, and shall be open to inspection on request of any citizen.

It shall be the duty of the Secretary to have record of the vote of all members present on any action taken by the Board, whether for, against, or abstaining.

In the absence of the President and Vice-President, the Secretary shall call the meeting to order, and a President Pro-Tempore shall be chosen by a majority of the members present.

F. DUTIES OF THE ASSISTANT SECRETARY **BCAD (LOCAL)**

The Assistant Secretary shall act as Secretary in the absence of the Secretary.

G. CHANCELLOR QUALIFICATIONS AND DUTIES **BFAI (LOCAL)**

The chief responsibilities of the Chancellor shall include the following:

1. To attend all Board meetings except when his or her own tenure and salary are to be discussed, and shall not necessarily then be excluded.
2. To act as the chief professional advisor to the Board in all matters pertaining to the College District involving their organization and operation.
3. To have general charge over the educational and business matters of the College District and over all persons employed therein.
4. To have general supervision and direction of all employees and to employ all personnel authorized in the budget.

5. To report to the Board from time to time at his or her discretion, or upon request of the Board, on the educational and business affairs of the College District.
6. To call meetings of the faculty, or other employees, at such times as he or she deems advisable, for professional training and consultation.
7. To investigate the needs of facilities for the College District and make such recommendations to the Board as will meet these needs; further, to approve the architect's plans and specification for new facilities and recommend them to the Board.
8. To prepare in specific detail, an estimate of receipts and expenditures, in the form of a budget, for the ensuing year, and submit this estimate to the Board within the dates as prescribed by law.
9. Within the limits of the budget, approved by the Board, to have the power to approve requisitions for purchases and expenditures for the operation of the College District; to delegate all, or part, of this authority as he or she deems appropriate to other member(s) of the administrative staff.
10. To represent the College District to the constituency, to the general public, in educational groups, and at legislative hearings.
11. To assist, as far as possible, in raising funds for the support of the College District and its programs.
12. To be charged with the responsibility of maintaining amity and unity of purpose among members of the teaching and administrative staff and other employees.
13. To be an active, contributing member of the local, state, national, and international educational communities and is thereby encouraged to serve in leadership roles in appropriate professional organizations.
14. To create contracts and agreements on behalf of and binding the College District in keeping with authorization or parameters prescribed by the Board

H. CHANCELLOR EVALUATION

BFDI (LOCAL)

1. CRITERIA

The Board shall prepare a written evaluation of the Chancellor at annual or more frequent intervals and may at any time conduct and communicate oral evaluations to

augment its written evaluations. The written evaluation shall be based on the Chancellor job description (see BFA1] and other criteria identified by the Board.

The Board shall furnish the Chancellor with a copy of the completed evaluation and shall discuss its conclusions with the Chancellor in closed meeting.

2. OBJECTIVES

The Board shall strive to accomplish the following objectives in conducting the Chancellor's evaluation:

1. Clarify to the Chancellor his or her role, as seen by the Board.
2. Clarify to Board members the Chancellor's role, according to the Board's written criteria, as expressed in the Chancellor's job description and the District's goals and objectives.
3. Foster an early understanding among new Board members of the evaluation process and the Chancellor's current performance objectives and priorities.
4. Develop and sustain a harmonious working relationship between the Board and the Chancellor
5. Ensure administrative leadership for excellence in the District.

I. CHANCELLOR NONRENEWAL

BFCB 1 (LEGAL)

The Board may decide by vote or inaction not to offer the Chancellor further employment with the College District beyond the term of the contract for any reason or no reason. Perry v. Sinderman, 408 U.S. 593 (1972); Board of Regents of State Colls. v. Roth, 408 U.S. 564 (1972)

J. CHANCELLOR DISMISSAL

BFCA 1 (LEGAL)

The Chancellor may be dismissed for good causes before the completion of the term fixed in the contract.

1. Notice. Before the Chancellor is dismissed, the Chancellor shall be given reasonable notice in writing of the proposed action and the grounds, set out in sufficient detail to fairly enable him or her to show any error that may exist.
2. Hearing. If, upon written notification, the Chancellor desires to be heard and contest the proposed action of the Board, the Chancellor shall give the Board written notice. The hearing shall be set on a date that affords the Chancellor reasonable time to prepare an adequate defense.

Cleveland Bd. Of Educ. v. Loudermill, 470 U.S. 532 (1985); Ferguson v. Thomas; 430 F.2d 852 (5th Cir. 1970); Bexar Cty. Sheriff's Civ. Serv. v. Davis, 802 S.W.2d 659 (Tex. 1990).

The Board may conduct the hearing in open session or in closed session unless the Chancellor requests a public hearing, in which case the hearing shall be open to the public. Gov't Code 551.074

At the hearing before the Board, the Chancellor may employ counsel. The Chancellor also has the right to hear the evidence upon which the charges are based, to cross-examine all adverse witnesses, and to present evidence of innocence or extenuating circumstances. Prior to dismissal, the Board shall determine the existence of the good cause for termination. Such determination shall be based solely on the evidence presented in the hearing. Ferguson v. Thomas, 430 F.2d 852 (5th Cir. 1970)

3. Suspension. The Chancellor may be suspended with pay pending the outcome of the dismissal hearing. Moore v. Knowles, 482 F.2d 1069 (5th Cir. 1973)

ARTICLE V. BOARD COMMITTEES

A. IN GENERAL

BCB (LEGAL)

The Board may from time to time as it deems necessary create committees to facilitate the efficient operation of the Board. A committee that includes one or more Board members and has supervision or control over public business or public policy is subject to the Open Meetings Act when it meets to discuss that public business or policy. A committee that includes less than a quorum of Board members is not subject to the Open Meetings Act if it serves a purely advisory function, with no power to supervise or control public business. However, should the committee actually function as something more than a merely advisory body with the result that it in fact supervises or controls public business or policy, it must comply with the Open Meetings Act to avoid depriving the public of access to the Board's actual decision-making process.

Education Code 11.061(c)(3); Atty. Gen. Op. Nos. DM-284 (1994), JM-1072 (1989), JM-331 (1985), H-3 (1973); see also Atty. Gen. Op. LO-97-058 (1997). [See BD(LEGAL)]

B. COMMITTEE OF THE WHOLE

BCB (LOCAL)

The Board shall have no standing committees. Insofar as possible, all committee work shall be done as a Committee of the Whole.

C. SPECIAL COMMITTEES

BCB (LOCAL)

The members of all committees shall be appointed by the Board President, subject to the concurrence of a majority of the Board. Vacancies shall be filled and approved in like manner as they occur. The Chancellor shall be an ex officio member of each such committee.

The work of all such special committees shall be fact finding and advisory and only in exceptional cases legislative or administrative, and only then by majority vote of the Board.

Fact finding and advisory committees shall report their findings and recommendations first to the Board, either through a written report or at a regular or special meeting. Committees shall not release any such reports to others prior to presentation to the members of the Board. Special committees shall report their findings to the Board and shall be dissolved upon completion of the assigned task or at the will of the Board.

D. COMMITTEE AUTHORITY BCB (LOCAL)

Special committees may act for the Board only within specific authority granted by the Board. For committee action to be binding on the Board, it shall be reported to the Board at its next meeting for approval and entry into the minutes as a public record.

**ARTICLE V.
BOARD MEETINGS**

A. OFFICIAL BUSINESS OF THE BOARD BD (LOCAL)

Official business of the Board may be transacted only at regular meetings of the Board, in special meetings called for that purpose, or through an executive committee approved by the Board and appointed by the Board President.

B. MEETING PLACE BD (LOCAL)

Unless otherwise provided in the notice for a meeting, Board meetings shall be held at the May Owen Center.

C. MEETING TIME BD (LOCAL)

Regular meetings of the Board shall be held on the third Thursday of each month at 6:00 p.m. at such place as the Board of President may designate. When determined necessary and for the convenience of Board members, the board President may change the date, time, or place of a regular meeting. The notice of that meeting shall reflect the changed date or time. There shall be one regular meeting of the Board each month, except during the months of July and December.

Meetings shall start promptly at the appointed time, provided a quorum is present.

If quorum is not present at the appointed time, the Board members present shall wait a minimum of 15 minutes before canceling the meeting.

D. SPECIAL OR EMERGENCY MEETINGS BD (LOCAL)

The time and place of special and emergency meetings shall be as set out in the notice for the

meeting.

The Board President shall call a special meeting at the President's discretion or on request by three members of the Board. Action of the Board for special meetings shall be confined to those purposes for which the special meetings were called.

The Board President shall call an emergency meeting when the Board President or three members of the Board determine that an emergency or urgent public necessity, as defined by law, warrants the meeting.

E. MEETINGS BY CONFERENCE CALL BD (LOCAL)

In accordance with Section 551.121, Texas Government Code, a meeting may be conducted by conference call if the meeting is a special, called meeting and immediate action is required.

F. AGENDA BD (LOCAL)

Items for the agenda must be submitted in sufficient time to allow the College District to comply with Texas law, which requires posting the agenda 72 hours before the meeting.

The agenda shall be prepared under the direction of the Chancellor with the advice and consent of the Board President. Any Board member may place an item on the agenda, and the Chancellor shall include on the agenda of any meeting all Board member requested topics that have been timely submitted.

Before the official agenda is finalized for any meeting, the Chancellor shall consult the President of the Board to ensure that the agenda and the topic included meet with the President's approval. In reviewing the preliminary agenda, the President shall ensure that any topic the Board or individual Board members have requested to be addressed are either on that agenda or scheduled for deliberation at an appropriate time in the near future. The President shall not have the authority to remove from the agenda a subject requested by a Board member without that Board member's specific authorization.

G. CONSENT AGENDA BD (LOCAL)

When the agenda is prepared, the President of the Board shall determine items, if any, that qualify to be placed on the consent agenda. A consent agenda shall include items of a routine and/or recurring nature grouped together under one action item. For each item listed as part of a consent agenda, the Board shall be furnished with background material. All such items shall be acted upon by one vote without separate discussion, unless a Board member requests that an item be withdrawn for individual consideration. The remaining items shall be adopted under a single motion and vote.

H. MATERIALS SUPPORTING AGENDA ITEMS BD (LOCAL)

The meeting agenda and necessary supporting materials shall be provided to Board members at least five business days prior to the meeting, except in such cases in which more time is warranted. The addition of any items after the agenda is sent to the Board, but before the deadline for posting, must be approved by the Board President. Upon approval for inclusion on

the agenda, any additional items and necessary supporting materials shall be sent to all Trustees.

To every extent practicable, the agenda and supporting materials shall be placed on the College District's Web site for viewing by both Board members and the public. Board members who wish to receive hard copies may continue to do so.

Any modification of supporting materials subsequent to being delivered to Board members must be explained prior to consideration of the appropriate agenda item.

I. NOTICE TO MEMBERS **BD (LOCAL)**

Members of the Board shall be given notice of regular and special meetings at least 72 hours prior to the scheduled time of the meeting and at least two hours prior to the time of an emergency meeting.

J. ORDER OF BUSINESS **BD (LOCAL)**

The order of business for regular Board meetings shall be as set out in the agenda accompanying the notice of the meeting. At the meeting, the order in which posted agenda items are taken may be changed by consensus of Board members present.

K. OPEN FORUM **BD (LOCAL)**

An open forum shall be included on the agenda for each regularly scheduled meeting to allow members of the public to address the Board on any issue except personnel. Each speaker shall be limited to three minutes. Delegations of persons wishing to speak on the same topic may be asked to appoint one spokesperson. [See BDB (LOCAL)]

L. RULES OF ORDER **BD (LOCAL)**

The Board shall observe the parliamentary procedures as found in *Robert's Rules of Order, Newly Revised*, except as otherwise provided in Board procedural rules or by law. Procedural rules may be suspended at any Board meeting by majority vote of the members present.

M. VOTING **BD (LOCAL)**

Voting shall be by voice vote or show of hands, as directed by the Board President. Any member may abstain from voting, and a member's vote or failure to vote shall be recorded upon that member's request.

N. MINUTES **BD (LOCAL)**

Board action shall be carefully recorded by the secretary or clerk; when approved, these minutes shall serve as the legal record of official Board actions. The written minutes of all meetings shall be approved by vote of the Board and signed by the President and the Secretary of the Board.

The official minutes of the Board shall be retained on file in the office of the College Chancellor and shall be available for examination during regular office hours. In addition, official minutes of all meetings shall be archived on the College District's Web site for a minimum of five years.

O. WEB/TELECASTING OF MEETINGS **BD (LOCAL)**

All meetings shall be telecast on the College District cable channel and on the College District's Web site. Video files of each meeting shall be posted on the Web site within two business days and shall be archived on the Web site for a minimum of two years. Additionally, all video files of Board meetings shall be permanently archived along with the official minutes at the College District offices.

P. DISCUSSIONS AND LIMITATION **BD (LOCAL)**

Discussions shall be addressed to the Board President and then the entire membership. Discussion shall be directed solely to the business currently under deliberation, and the Board President shall halt discussion that does not apply to the business before the Board.

The Board President shall also halt discussion if the Board has agreed to a time limitation for discussion of an item, and that time limit has expired. Aside from these limitations, the Board President shall not interfere with debate so long as members wish to address themselves to an item under consideration.

The Board President shall take whatever actions deemed necessary to keep discussion at a proper decorum.

Q. CLOSED MEETING **BD (LOCAL)**

Notice of all meetings may provide for the possibility of a closed meeting during an open meeting, as provided by law. The Board may conduct a closed meeting when the agenda subject is one that may properly be discussed in closed meeting. [See *TCCD Policy and Regulation Manual BDA*]

R. EXCEPTIONS FOR CLOSED MEETING **BDA (LEGAL)**

The Board may conduct a closed meeting for the purposes described in the following provisions:

1. Attorney Consultation. The Board may conduct a private consultation with its attorney only when it seeks the attorney's advice about pending or contemplated litigation or a settlement offer or on a matter in which the duty of the attorney to the Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the requirement for open meetings. *Gov't Code 551.071* [See BD for permissible methods of communication for attorney consultations]
2. Real Property. The Board may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the Board's position in negotiations with a third person. *Gov't Code 551.072*

3. Prospective Gift. The Board may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the College District if deliberation in an open meeting would have a detrimental effect on the Board's position in negotiations with a third person. *Gov't Code 551.073*
4. Personnel Matters. The Board is not required to conduct an open meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee. However, the Board may not conduct a closed meeting for these purposes if the officer or employee who is the subject of the deliberation or hearing requests a public hearing. *Gov't Code 551.074*

The closed meeting exception for personnel matters does not apply when the Board discusses an independent contractor who is not a College District employee, such as an engineering, architectural, or consultant firm, or when the Board discusses a class or group of employees, not a particular employee. *Atty. Gen. Op. MW-129 (1980), Atty. Gen. Op. H-496 (1975)*

The Board is not required to conduct an open meeting to deliberate in a case in which a complaint or charge is brought against a College District employee by another employee and the complaint or charge directly results in the need for a hearing. However, the Board may not conduct a closed meeting for this purpose if the employee against whom the complaint or charge is brought makes a written request for an open hearing. *Gov't Code 551.082*

5. Student Discipline. The Board is not required to conduct an open meeting to deliberate in a case involving discipline of a secondary school child. However, the Board may not conduct a closed meeting for the purpose if the child's parent or guardian makes a written request for an open meeting. *Gov't Code 551.082*
6. Personally Identifiable Student Information. The Board is not required to conduct an open meeting to deliberate a matter regarding a secondary school student if personally identifiable information about the student will necessarily be revealed by the deliberation.

Directory information about a College District student is considered to be personally identifiable information about the student for this purpose only if a parent or guardian of the student, or the student if the student has attained 18 years of age, has informed the College District that the directory information should not be released without prior consent. [See *TCCD Policy and Regulation Manual FJ*]

This exception does not apply if an open meeting about the matter is requested in writing by a parent or guardian of the student or by the student if the student has attained 18 years of age.

Gov't Code 551.0821

7. Medical or Psychiatric Records. A Board that administers a public insurance, health, or retirement plan is not required to conduct an open meeting to deliberate:

- a. The medical records or psychiatric records of an individual applicant for a benefit from the plan; or
- b. A matter that includes a consideration of information in the medical or psychiatric records of an individual applicant for a benefit from the plan

Gov't Code 551.0785

8. Security. The Board is not required to conduct an open meeting to deliberate:

- a. The deployment, or specific occasions for implementation, of security personnel or devices; or
- b. A security audit.

Gov't Code 551.076

9. Assessment Instruments. The Board shall conduct a closed meeting to discuss or adopt individual assessment instruments or assessment instrument items. *Education Code 39.030(a)*

10. Emergency Management. The Board is not required to conduct an open meeting to deliberate information confidential under Government Code Section 418-175-418.182, relating to Homeland Security. However, the Board must make a tape recording of the proceedings of a closed meeting held to deliberate the information. *Gov't Code 418.183(f)*

11. Economic Development Negotiations. The Board is not required to conduct an open meeting:

- a. To discuss or deliberate regarding commercial or financial information that the Board has received from a business prospect that the Board seeks to have locate, stay, or expand in or near the College District and with which the Board is conducting economic development negotiations; or
- b. To deliberate the offer of a financial or other incentive to such a business prospect.

Gov't Code 551.087

S. PROCEDURES FOR CLOSED MEETINGS

BDA (LEGAL)

If a closed meeting is allowed, the Board shall not conduct the closed meeting unless a quorum of the Board first convenes in an open meeting for which proper notice has been given [see *TCCD Policy and Regulation Manual BD*] and the presiding officer has publicly announced that

a closed meeting will be held and has identified the section or sections of the Open Meetings Act or other applicable law under which the closed meeting is held. *Gov't Code 551.101*

T. VOTE OR FINAL ACTION

BDA (LEGAL)

A final action, decision, or vote on a matter deliberated in a closed meeting shall be made only in an open meeting for which proper notice has been given. *Gov't Code 551.102* [See BD]

U. CERTIFIED AGENDA OR TAPE RECORDING

BDA (LEGAL)

The Board shall either keep a certified agenda or make a tape recording of the proceedings of each closed meeting, except for private consultation with the College District's attorney. The certified agenda must include a statement of the subject matter of each deliberation, a record of any further action taken, and an announcement by the presiding officer at the beginning and end of the closed meeting indicating the date and time. The presiding officer shall certify that a certified agenda is a true and correct record of the proceedings. If a tape recording is made, it must include announcements by the presiding officer at the beginning and end of the meeting indicating the date and time. *Gov't Code 551.103*

Closed meetings may not be recorded by an individual Trustee against the wishes of a majority of the Board. *Zamora v. Edgewood ISD*, 592 S.W.2d 649 (Tex. App. – San Antonio, 1979)

The Board shall preserve the certified agenda or tape recording of a closed meeting for at least two years after the date of the meeting. If a legal action involving the meeting is brought within that period, the Board shall preserve the certified agenda or tape recording while the action is pending. *Gov't Code 551.104(a)*

V. PUBLIC ACCESS

BDA (LEGAL)

A certified agenda or tape recording of a closed meeting is available for public inspection and copying only under a court order issued as a result of litigation involving an alleged violation of the Open Meetings Act. *Gov't Code 551.104 (b)(c)*

W. PROHIBITIONS

BDA (LEGAL)

No Board member shall participate in a closed meeting knowing that neither a certified agenda nor a tape recording of the closed meeting is being made. *Gov't Code 551.145*

No individual, corporation, or partnership shall without lawful authority disclose to a member of the public the certified agenda or tape recording of a meeting that was lawfully closed to the public. *Gov't Code 551.146*

No Board member shall knowingly call or aid in calling or organizing a closed meeting that is not permitted under the Open Meetings Act, close or aid in closing a regular meeting to the public except as permitted under the Open Meetings Act, or participate in a closed meeting that is not permitted under the Open Meetings Act. *Gov't Code 551.144(a)*

It is an affirmative defense to prosecution under Subsection 551.144(a) that the Board member acted in reasonable reliance on a court order or a written interpretation of the open meetings

law contained in an opinion of a court of record, the attorney general, or the Board's attorney.
Gov't Code 551.144(c)

X. PUBLIC PARTICIPATION

BDB (LEGAL)
BDB (LOCAL)

The College District shall take no action abridging the freedom of speech or the right of the people to petition the Board for redress of grievances. *U.S. Const. Amend. I, XIV*

The Board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. But when the Board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys. *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995); *City of Madison v. Wis. Emp. Re. Comm'n*, 429 U.S. 167, 174 (1976); *Pickering v. Bd. Of Educ.*, 391 U.S. 563, 568 (1968)

As long as the requirements of the Open Meetings Act are satisfied and the right of citizens to apply to the Board for redress of their grievances is not abridged, the Board need not provide a public forum for every citizen wishing to express an opinion on a matter. Reasonable restraints on the number, length, and frequency of presentations are permissible. The Board may limit the number of persons it will hear on a particular subject and the frequency with which they may appear, so long as the regulation does not abridge constitutionally guaranteed rights of freedom of speech and to petition, nor unfairly discriminate among views seeking expression. *Atty. Gen. Op. H-188 (1973)* [See BD regarding the Open Meetings Act and DGBA, FLD, and GB regarding grievance procedures]

Citizens shall have the right, in a peaceable manner, to assemble together for their common good and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance. *Tex. Const. Art. 1, Sec. 27*

Board meetings shall be held to transact the business of the College District and shall be open to the public, except when closed meetings are permitted by law. [See *TCCD Policy and Regulation Manual BDA*] Citizens shall be allowed to address the Board by requesting a place on the agenda. [See AGENDA PRESENTATION section, below] The Board shall set reasonable restraints on the number, length, and frequency of presentations.

At regular meetings, the Board shall hear persons who desire to make comments to the Board. Persons who wish to participate in the portion of the meeting shall sign up with the presiding officer or designee before the meeting begins and shall indicate the topic about which they wish to speak. The public may address the Board on any topic except personnel.

No presentation shall exceed three minutes. Delegations of persons wishing to speak on the same topic may be asked to appoint one spokesperson [See *TCCD Policy and Regulation Manual BD (LOCAL)*]

1. Public Comment. The term "public comment" provides sufficient notice, under the Open Meetings Act, of the subject matter of "public comment" sessions where the general public addresses the Board about its concerns and where the Board does not comment or deliberate except as authorized by Gov't code 551.042. The term "public comment" is

not adequate notice if, prior to the meeting, the Board is aware, or reasonably should have been aware, of specific topics to be raised. *Gov't Code 551.042; Atty. Gen. Op. JC-0169 (2000)*

Public participation shall be limited to those individuals who are on the agenda or who have signed up to speak during the open forum. At all other times during Board meetings, the audience shall not enter into discussion or debate on matters being considered by the Board.

If the Board President determines that a person has not attempted to resolve a matter administratively, the person shall be directed to the appropriate policy for attempted resolution before bringing the matter to the Board.

2. Disruption. It is a criminal offense for a person, with intent to prevent or disrupt a lawful meeting, to substantially obstruct or interfere with the ordinary conduct of a meeting by physical action or verbal utterance and thereby curtail the exercise of others' First Amendment rights. *Penal Code 42.05; Morehead v. State, 807 S.W.2d 577 (Tex. Crim. App. 1991)*

The Board shall not tolerate disruption of the meeting by members of the audience. If, after at least one warning from the presiding officer, any person continues to disrupt the meeting by his or her words or actions, the presiding officer may request assistance from law enforcement officials to have the person removed from the meeting.

3. Response to Complaints. There is no requirement that the Board negotiate or even respond to complaints. However, the Board must stop, look, and listen and must consider the petition, address, or remonstrance. *Professional Ass'n of Coll. Educators v. El Paso County Cmty. Dist., 678 S.W.2d 94 (Tex. App-El Paso 1984, writ ref'd n.r.e.)*

Complaints and concerns for which other resolution channels are provided shall be directed through those channels as follows (*references are to the TCCD Policy and Regulation Manual*):

1. Employee complaints – DGBA
Sexual harassment; DHA
2. Termination of employment – DM series
3. Student complaints – FLD
Sexual harassment: FLDA
4. Student discipline and penalties – FMA
5. Student organizations – FKC

6. Changes concerning College District policies and regulations – BE

ARTICLE VI
BOARD MEMBERS VACANCIES AND REMOVAL FROM OFFICE

A. FILLING A VACANCY

BBC (LEGAL)

Any vacancy occurring on the Board through death, resignation, or otherwise, shall be filled by a special election ordered by the Board or by appointment by resolution or order of the Board. If the vacancy occurs on a Board whose members are elected at large/by position, the person appointed to fill the unexpired term shall serve until the next regular election of members to the Board, at which time the position shall be filled by election for a term appropriately shortened to conform with what regularly would have been the length of the term for that position. *Education Code 130.082(d)*

1. Optional Appointment Consideration. An appointment to the Board shall be made as required by applicable law and may be made with the intent to ensure that the Board is representative of the constituency served by the Board. The Board that chooses this optional appointment consideration shall adopt procedures for its implementation. *Local Gov't Code 180.005(b), (c)*
2. Special Election. A special election shall be conducted in the same manner as the general election on the next uniform election date that will afford enough time to hold the election in the manner required by law. *Election Code 41.001(a), 41.004(a)*
3. Preclearance Required. A special election is subject to federal preclearance requirements to the extent that the College District makes changes in the practices or procedures to be followed. Any discretionary setting of the date for a special election or scheduling of events leading to or following a special election is subject to the preclearance requirement. *28 CFR 51.17*
4. Holdover Doctrine. All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified, i.e., sworn in. Until the vacancy created by a Trustee's resignation is filled by a successor, the Trustee continues to serve and have the duties and powers of office, except that a Trustee may not vote on the appointment of the Trustee's successor. *Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (19876), DM-2 (1991), 0-6259 (1945)*

B. RESIGNATION

BBC (LEGAL)

To be effective, a Board member's resignation must be in writing and signed by the officer and must be delivered to the Board for acting on the resignation. The Board may not refuse to accept a resignation. If a Trustee submits a resignation, whether to be effective immediately or at future date, a vacancy occurs on the date the resignation is accepted by the Board or on the eighth day after the date of its receipt by the Board, whichever is earlier. *Election Code 201.001(a), 201.023*

C. NONRESIDENCE

BBC (LEGAL)

A person elected to serve as a Board member must remain a resident to the College District throughout the term of office. A Board member who ceases to reside in the College District vacates his or her office. *Tex. Const., Art. XVI, Sec. 14; Education Code 130.082(d); Whitmarsh v. Buckley*, 324 [S.@.2d](#) 298 (Tex. Civ. App. 1959)

D. REMOVAL FROM OFFICE

BBC (LEGAL)

Board members may be removed from office for:

1. "Incompetency" which means:
 - a. Gross ignorance of official duties;
 - b. Gross carelessness in the discharge of those duties; or
 - c. Unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of election.
2. "Official misconduct," which means intentional, unlawful behavior relating to official duties by a Trustee entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of a Trustee to perform a duty imposed on the Trustee by law and conviction of an offense relating to violation of purchase procedures. [See CH]
3. Intoxication on or off duty caused by drinking an alcoholic beverage, but not if it was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician.
4. Conviction of a Trustee by a jury for any felony or for misdemeanor official misconduct.
5. Nonattendance of Board meetings if the member is absent from more than half of the regularly scheduled Board meetings that the member is eligible to attend during a calendar year, not counting an absence for which the member is excused by a majority vote of the Board.

Actions for removal of Board members must be brought before the judge of the district court holding jurisdiction, except that any court convicting a Trustee of a felony or official misconduct shall order immediate removal.

Tex. Const. Art. V, Sec. 24; Local Gov't Code 87.011, 87.012, 87.013, 87.031; Education Code 44.032(e), 130.0845

E. TEMPORARY REPLACEMENT OF BOARD MEMBER ON MILITARY ACTIVE DUTY

BBC (LEGAL)

A Board member who enters active duty in the armed forces of the United States as a result of being called to duty, drafted, or activated does not vacate the office held, but the Board may

appoint a replacement to serve as a temporary Board member if the elected or appointed Board member will be on active duty for longer than 30 days.

The Board member who is temporarily replaced may recommend to the Board the name of a person to temporarily fill the office. The Board shall appoint the temporary Board member to begin service on the date specified in writing by the Board member being temporarily replaced as the date the Board member will enter active military service.

A temporary Board member has all the powers, privileges, and duties of the office as the Board member who is temporarily replaced. A temporary Board member shall perform the duties of office for the shorter period of:

1. The term of the active military service of the Board member who is temporarily replaced; or
2. The term of office of the Board member who is temporarily replaced.

“Armed Forces of the United States” means the United States Army, The United States Navy, The United States Air Force, the United States Marine Corps, the United States Coast Guard, any reserve or auxiliary component of any of those services, or the National Guard.

Tex. Const., Art. XVI, Sec. 72

F. PROTECTIONS FOR ACTING ON A LEGISLATIVE MEASURE

BBE(LEGAL)

A Board member may not be subject to disciplinary action or a sanction, penalty, disability, or liability for:

1. An action permitted by law that the officer takes in the officer’s official capacity regarding a legislative measure;
2. Proposing, endorsing, or expressing support for or opposition to a legislative measure or taking any action permitted by law to support or oppose a legislative measure;
3. The effect of a legislative measure or of a change in law proposed by a legislative measure on any person; or
4. A breach of duty, in connection with the member’s practice of or employment in a licensed or regulated profession or occupation, to disclose to any person information, or to obtain a waiver or consent from any person, regarding the officer’s actions relating to a legislative measure; or the substance, effects, or potential effects of a legislative measure.

Gov’t Code 572.059

ARTICLE VII.
POLICY AND BYLAWS DEVELOPMENT AND AMENDMENTS

A. IN GENERAL

BE (LEGAL)
BE (LOCAL)

The Board shall adopt such rules, regulations and bylaws as it deems advisable and consistent with law. *Education Code 130.082(d)*

Within the context of current law, the College District shall be guided by Board-adopted written policies that are given appropriate distribution and are accessible to staff members, students, and community residents.

Legally referenced policies contain provisions from federal and state statutes and regulations, case law, and other legal authority that together form the framework for local decision making and implementation. These policies are binding on the College District until the cited provisions are repealed, revised, or superseded by legislative, regulatory, or judicial action.

No policy or regulation, or any portion thereof, shall be operative if it is found to be in conflict with applicable law.

B. POLICY DEVELOPMENT

BE (LOCAL)

Policies and policy amendments may be initiated by the Chancellor, Board members, college personnel, students, or community citizens, but generally shall be recommended for the Board's consideration by the Chancellor.

C. ADOPTION/AMENDMENTS

BE (LOCAL)

Board policies may be adopted, amended, or suspended by a two-thirds vote of the members of the Board present and voting at a meeting of the Board, providing that a proposed amendment has been submitted in writing to the Board President ten days prior to being voted upon at a regular meeting, and provided further that the Board President has transmitted (mailed) the proposed amendment in writing to the members of the Board at least seven days prior to the regular meeting at which the amendment is voted upon, except that the regular meeting date of the Board may be changed by majority vote of the members present, and by inclusion of this item on the regular agenda of the Board meeting at which it is to be considered.

Local policies become effective upon Board adoption or at a future date designated by the Board at the time of adoption.

D. SEVERABILITY

BE (LOCAL)

If any portion of a policy or its application to any person or circumstance is found to be invalid, that invalidity shall not affect other provisions or applications of policy that can be given effect without the invalid provision or application. To this end the provisions of this policy manual are declared to be severable.