

# Policy Reference Manual

## *Update 24*

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Update 24 for the *TACC Policy Reference Manual* includes clarification of existing materials and new legal materials arising from administrative action and legislation, including the Higher Education Opportunity Act, over the past year that affects the governance and management of Texas community colleges. Of particular significance are policy revisions/additions that address:

- Board Elections
- Racial Profiling
- Accessibility to Electronic Information Resources
- Disparate Treatment and Impact
- Family and Medical Leave Act
- Harassment, Discrimination, and Retaliation
- Conflicts of Interest (Student Loans)
- Emergency Response and Evacuation

As a housekeeping matter, we have also made numerous editorial and citation adjustments throughout this Update to more closely track the law.

Please remember that the *TACC Policy Reference Manual*, a comprehensive collection of federal and state statutes and regulations, case law, and attorney general opinions affecting Texas community colleges, is now located on the **TACC Web site**. The policies in this Update have already been incorporated into the *TACC Policy Reference Manual*.

**Please note:**

- This **Update 24** packet contains:

**INSTRUCTIONS** . . . providing specific directions on which policies have been revised, added, or deleted at this Update;

**EXPLANATORY NOTES** . . . summarizing and pointing out changes occurring within each policy code; and

**UPDATED POLICIES . . .** reflecting new or replacement materials included in this Update.

- By early March, Policy Service will issue localized updates to college districts that have adopted TASB Localized Policy Manuals. The localized update will address the issues raised within the reference manual update and will include college district-specific and adoptable (LOCAL) policy recommendations and language to ensure harmony with evolving law and practice.
- This Update 24 packet may not be considered as legal advice and is not intended as a substitute for the advice of the board's own legal counsel.
- This annual Update is the result of collaboration among TASB Legal and Policy Services and the Texas Association of Community Colleges. Questions regarding this Update may be addressed to Dr. Rey Garcia, TACC President, at 512-476-2572, or Eric Narcisse or Amy Kadlecek, TASB Policy Consultants and Community College Liaisons, at 800-580-7529 or 512-467-0222.

## Instruction Sheet

### TACC Policy Reference Manual Update 24

District Community College Policy Reference Manual

Code	Action To Be Taken	Note
BBB (LEGAL)	Replace policy	Revised policy
BF (LEGAL)	Replace policy	Revised policy
BIA (LEGAL)	Replace policy	Revised policy
CAD (LEGAL)	Replace policy	Revised policy
CAK (LEGAL)	Replace policy	Revised policy
CDA (LEGAL)	Replace policy	Revised policy
CDDA (LEGAL)	Replace policy	Revised policy
CF (LEGAL)	Replace policy	Revised policy
CGC (LEGAL)	Replace policy	Revised policy
CHA (LEGAL)	Replace policy	Revised policy
CJ (LEGAL)	Replace policy	Revised policy
CKC (LEGAL)	Replace policy	Revised policy
CS (LEGAL)	Replace policy	Revised policy
D (LEGAL)	Replace table of contents	Revised table of contents
DAA (LEGAL)	Replace policy	Revised policy
DBD (LEGAL)	Replace policy	Revised policy
DC (LEGAL)	Replace policy	Revised policy
DDC (LEGAL)	Replace policy	Revised policy
DEA (LEGAL)	Replace policy	Revised policy
DEC (LEGAL)	Replace policy	Revised policy
DECA (LEGAL)	ADD policy	See explanatory note
DECB (LEGAL)	ADD policy	See explanatory note
DEE (LEGAL)	Replace policy	Revised policy
DF (LEGAL)	Replace policy	Revised policy
DG (LEGAL)	Replace policy	Revised policy
DHA (LEGAL)	DELETE policy	See explanatory note
DOA (LEGAL)	ADD policy	See explanatory note
E (LEGAL)	Replace table of contents	Revised table of contents
EBB (LEGAL)	Replace policy	Revised policy
ECC (LEGAL)	Replace policy	Revised policy
EFAA (LEGAL)	Replace policy	Revised policy
F (LEGAL)	Replace table of contents	Revised table of contents

Instruction Sheet  
TACC Policy Reference Manual Update 24

FA	(LEGAL)	Replace policy	Revised policy
FBB	(LEGAL)	Replace policy	Revised policy
FBC	(LEGAL)	Replace policy	Revised policy
FDE	(LEGAL)	ADD policy	See explanatory note
FJ	(LEGAL)	Replace policy	Revised policy
FLD	(LEGAL)	Replace policy	Revised policy
FLDA	(LEGAL)	DELETE policy	See explanatory note
GAA	(LEGAL)	Replace policy	Revised policy
GE	(LEGAL)	Replace policy	Revised policy
GF	(LEGAL)	Replace policy	Revised policy
GL	(LEGAL)	Replace policy	Revised policy

STUDENT RIGHTS AND RESPONSIBILITIES  
STUDENT COMPLAINTS

FLD  
(LEGAL)

UNITED STATES  
CONSTITUTION

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* [See FLAA]

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. Rel. Comm'n*, 429 U.S. 167, 174 (1976); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)

TEXAS CONSTITUTION

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. I, Sec. 27*

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. *Prof'l Ass'n of College Educators v. El Paso County Cmty. [College] Dist.*, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref'd n.r.e.)

FEDERAL LAWS  
SECTION 504

The College District that receives federal financial assistance, directly or indirectly, and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973. *34 CFR 104.7(b)*

AMERICANS WITH  
DISABILITIES ACT

The College District that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Code of Federal Regulations, Title 28, Part 35 (Americans with Disabilities Act regulations). *28 CFR 35.107*

TITLE IX

The College District that receives federal financial assistance, directly or indirectly, shall adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging any action prohibited by Title IX of the Education Amendments of 1972. *34 CFR 106.8(b)* [See FA]

CHALLENGE TO  
EDUCATION RECORDS

The College District shall give a student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the

STUDENT RIGHTS AND RESPONSIBILITIES  
STUDENT COMPLAINTS

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(LEGAL)

records is inaccurate, misleading, or in violation of the privacy rights of the student. *34 CFR 99.21* [See FJ]

CLOSED MEETING

The Board may conduct a closed meeting on a student complaint to the extent required or provided by law. [See BDA]

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)*

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**Note:** See GFA for provisions concerning students barred from campus.

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	<p>No officer or employee of the College District shall, when acting or purporting to act in an official capacity, refuse to permit any student to participate in any school program because of the student's race, religion, color, sex, or national origin. <i>Civ. Prac. &amp; Rem. Code 106.001</i></p>
RELIGIOUS FREEDOM	<p>The College District may not substantially burden a student's free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. <i>Civ. Prac. &amp; Rem. Code 110.003</i></p>
FEDERAL FUNDING RECIPIENTS	<p>No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination by any College District that receives federal financial assistance, on the basis of any of the following protected characteristics:</p> <ol style="list-style-type: none"> <li>1. Sex.</li> <li>2. Race, color, or national origin.</li> <li>3. Disability, or relationship or association with an individual with a disability. [See EHB, EHBA series, and GA]</li> </ol> <p><i>20 U.S.C. 1681 (Title IX); 42 U.S.C. 2000d (Title VI); 29 U.S.C. 794 (Section 504); 42 U.S.C. 12132 (Americans with Disabilities Act [ADA])</i></p>
HARASSMENT	<p>Sexual harassment of students is discrimination on the basis of sex under Title IX. <u><i>Franklin v. Gwinnett County Schools</i></u>, 503 U.S. 60 (1992) [See also FDE]</p>
COORDINATORS	<p>The College District shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, and the ADA. The College District shall notify all students and employees of the name, office address, and telephone number of the employee(s) so designated.</p>
GRIEVANCE PROCEDURES	<p>The College District shall adopt and publish grievance procedures for prompt and equitable resolution of student complaints alleging discrimination under these statutes. [See FDE]</p> <p><i>34 CFR 106.8 (Title IX); 34 CFR 104.7 (Section 504)</i></p>
RETALIATION	<p>The College District shall not coerce, intimidate, threaten, retaliate against, or interfere with any person who attempts to assert a right protected by the above laws or cooperates with investigation and enforcement proceedings under these laws. <i>34 CFR 100.7(e) (Title VI), 104.61 (Section 504), 106.71 (Title IX)</i></p>
SECTION 504 DEFINITIONS	<p>A "student with a disability" is one who has a physical or mental impairment that substantially limits one or more of the student's</p>

major life activities, has a record of having such an impairment, or is being regarded as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

A student meets the requirement of being "regarded as" having an impairment if the student establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of six months or less.

"Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. "Major life activity" also includes the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

*29 U.S.C. 705; 42 U.S.C. 12102*

A student with a disability shall not, on the basis of disability, be denied admission to, excluded from participation in, denied benefits of, or otherwise subjected to discrimination in any program or activity that benefits from federal financial assistance. *29 U.S.C. 794; 34 CFR 104.41–.47*

#### DISCRIMINATION ON THE BASIS OF SEX

No person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research or other education program or activity operated by any College District receiving federal financial assistance. *34 CFR 106.31*

Educational programs and activities include:

EQUAL EDUCATIONAL OPPORTUNITIES

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(LEGAL)

1. Housing. *34 CFR 106.32*
2. Comparable facilities. *34 CFR 106.33*
3. Access to course offerings. *34 CFR 106.34*
4. Counseling. *34 CFR 106.36*
5. Financial assistance. *34 CFR 106.37*
6. Employment assistance to students. *34 CFR 106.38*
7. Health and insurance benefits and services. *34 CFR 106.39*
8. Athletics. *34 CFR 106.41*

PREGNANCY AND  
MARITAL STATUS

A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex. *34 CFR 106.40* [See FND]