



Emergency Procedures for School Districts FAQs

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Emergency Operations Plan

Q: Must districts adopt an emergency operations plan?

A: Yes. Each district should adopt and implement a multihazard emergency operations plan for use in the district's facilities. The plan must address mitigation, preparedness, response, and recovery as defined by the Commissioner of Education in conjunction with the Texas Division of Emergency Management. The plan must provide for: (1) district employee training in responding to an emergency; (2) mandatory school drills and exercises to prepare students and employees for responding to an emergency; (3) measures to ensure coordination with the Texas Department of State Health Services (TDSHS) and local emergency management agencies, law enforcement, health departments, and fire departments in the event of an emergency; and (4) the implementation of a required safety and security audit. Tex. Educ. Code § 37.108. See TASB Policy CKC(LEGAL).

Q: May a member of the public see a district's emergency operations plan?

A: No. However, an interested person may request access to a document that verifies that the district has established an emergency operations plan, that the district has reviewed its emergency operations plan within the last twelve months, and that district employees have been trained to respond to an emergency, among other things. For a complete list of information that such a document may verify for a requestor, see Section 37.108(c-2) of the Texas Education Code. See also TASB Policy CKC (LEGAL).

Emergency Purchasing Procedures

Q: What if a school district needs to purchase goods or services immediately due to an emergency?

A: The Texas legislature has provided an avenue for districts to purchase goods or services in the event of an emergency. In 1999, the Texas legislature added two provisions to the Education Code that address emergency purchasing procedures when the dollar amount of the purchase triggers the competitive procurement requirements. Tex. Educ. Code § 44.031(h). Both sections are substantially similar and therefore provide essentially the same guidance to districts.

If school equipment, a school facility or part of a school facility, or personal property is destroyed or severely damaged and needs to be repaired or replaced, and the board determines that the delay arising from following the regular purchasing methods would prevent or substantially impair the conduct of classes or other essential school activities, the board is not required to use one of the regular purchasing methods required by law to contract for replacement or repair of the damage. Tex. Educ. Code § 44.031(h). Rather, the board may employ the contracting method that is best suited to the district's needs. Districts should be careful to rely on this provision only in the case of a true emergency and not merely an incident of poor planning.

Additionally, as Section 44.031(h) only relieves districts from compliance with the regular purchasing methods in an emergency, the district still must comply with requirements pertaining to performance and payment bonds. Payment bonds are required for construction projects that exceed \$25,000, and performance bonds are required for construction projects exceeding \$100,000. Tex. Gov't Code § 2253.021. See also TASB Policy CV(LEGAL).

Requesting Assistance from Another Local Government in an Emergency

Q: May a district request assistance from another local government? Likewise, may a district provide emergency assistance to another local government?

A: Texas law provides for procedures regarding the provision of emergency assistance from one local government entity to another. Tex. Gov't Code § 791.027. A "local government entity" is a county, incorporated city, independent school district, public junior college district, emergency services district, other special district, joint board, or other entity defined as a political subdivision under Texas law that maintains the capability to provide mutual aid. Tex. Gov't Code § 418.004(10). "Mutual aid" is any activity related to the prevention or discovery of, response to, or recovery from a terrorist attack, a natural or manmade disaster, hostile military or paramilitary action, or extraordinary law enforcement emergency performed under the Texas Statewide Mutual Aid System or a written mutual aid agreement. Tex. Gov't Code §§ 418.004(11); 421.001(3).

If the board president of a district determines that a civil emergency exists in the district that requires the assistance of another local government, the board president may request such assistance. Conversely, if the presiding officer of another local government determines that a state of civil emergency exists that requires a school district's assistance, and the presiding officer requests such assistance, then the board may authorize the district to provide such assistance by resolution or other official action. Tex. Gov't Code § 791.027. See also TASB Policy GRC(LEGAL). This system is known as the Texas Statewide Mutual Aid System. Tex. Gov't Code § 418.004(14).

For more information on the Texas Statewide Mutual Aid System, please see TASB Policy GRC(LEGAL), or contact the Texas Emergency Management Division at 512.424.2138.

Emergency Meeting Procedures

Q: May a school district hold emergency meetings of the board? If so, what are the requirements to do so?

A: Yes, districts may hold emergency board meetings. An emergency exists only if immediate action is required because of: (1) an imminent threat to public health and safety, or (2) a reasonably unforeseeable situation. Tex. Gov't Code § 551.045(b). The sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation. Tex. Gov't Code § 551.045(e). The district must post notice of an emergency meeting or an emergency addition to an existing agenda no less than two hours before the scheduled time of the meeting. The notice of the emergency meeting or the additional agenda item must clearly identify the emergency or urgent public necessity justifying the short notice. Tex. Gov't Code § 551.045(a), (c). [See the sample Notice of Emergency Meeting in the Attachments to this document.] Additionally, if the board is holding an emergency meeting due to the sudden relocation of a number of residents from the area of a declared disaster to the district's jurisdiction, the district must give notice of the meeting to the news media no later than one hour before the scheduled time of the meeting. Tex. Gov't Code §§ 551.045, .047. See also TASB Policy BE(LEGAL).

Usually, a quorum must be present at an emergency meeting for the district to conduct any school business. A quorum is not required for the board to act, however, if the district's jurisdiction is wholly or partly located in the area of a disaster declared by the president of the United States or the governor, and a majority of the members of the board are not able to be present at the meeting due to the disaster. Tex. Gov't Code § 418.1101. See TASB Policy BE(LEGAL).

Q: What if an emergency prevents a district from holding a meeting that was otherwise properly posted?

A: Rules exist for meetings prevented by a catastrophe. A catastrophe is defined as a condition or occurrence that interferes physically with the ability of a governmental body to conduct a meeting. A catastrophe includes: fire, flood, earthquake, hurricane, tornado, wind, rain, snow storm, power failure, transportation failure, interruption of communication facilities, epidemic, riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence. Tex. Gov't Code § 551.0411(c). If a catastrophe prevents a governmental body from convening an open meeting that was otherwise properly posted, the body may convene the meeting in a convenient location within 72 hours pursuant to section 551.045 of the Texas Open Meetings Act (OMA) if the action is in good faith and not done in order to circumvent the OMA. Tex. Gov't Code § 551.0411(b). See TASB Policy BE(LEGAL).

Use of School Facilities as Emergency Shelters

Q: Are school districts required to open up school district facilities as shelters during an emergency?

A: Usually, no. However, Section 418 of the Texas Government Code states that “[t]he governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster” and that the governor may “temporarily reassign resources, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services.” Tex. Gov’t Code § 418.017(a)-(b). A disaster is “the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency.” Tex. Gov’t Code § 418.004(1). The governor has the power to declare a state of disaster if he or she finds that a disaster has occurred or that a disaster is imminent. Tex. Gov’t Code § 418.014(a). Therefore, a district may have no choice as to whether it offers its facilities as emergency shelters if the governor declares a disaster.

Although school districts are usually not required to open their facilities as emergency shelters, many desire to do so. A district’s policy at GKD(LOCAL) may provide that the district may open its facilities as emergency shelters. Additionally, emergency management personnel usually prefer to use school district facilities as emergency shelters, as school district facilities are already in compliance with the Americans with Disabilities Amendment Act of 2008 (ADAAA). Many school districts that choose to open their facilities as emergency shelters operate in conjunction with neighboring districts and local emergency management personnel. Therefore, TASB Risk Management Services recommends that a district work with neighboring districts and local emergency management personnel when developing emergency procedures, as this could help streamline the process of operating an emergency shelter and conserve resources. A good starting point is to contact the district’s local Office of Emergency Management. For example, the Offices of Emergency Management for the City of Austin, Travis County, and Williamson County have developed a Capital Area Shelter Hub Plan, which districts in the Central Texas area often use as a guiding document in an emergency.

Q: Must school districts retain control over all services provided and functions performed at school facilities used as emergency shelters, or may districts allow third parties to exercise some control?

A: Many districts that open their facilities as emergency shelters operate in tandem with the Red Cross and other emergency relief groups. These districts usually operate under a system of “unified command,” in which each entity retains some control over certain functions of the emergency shelter. For example, the district would retain control over services it can best provide, such as law enforcement and food, while the Red Cross would retain control over

services it can best provide, such as medical care. Some districts enter into agreements or memoranda of understanding (MOUs) that outline the parties' liabilities and responsibilities while operating the emergency shelter. TASB's Risk Management Services Division recommends that districts enter into some form of a written agreement prior to operating as an emergency shelter, if possible, that specifies in detail the roles and responsibilities of each party, including a limit on the number of days that the district will permit the facilities to operate as emergency shelters. Regarding the length of use as an emergency shelter, a shorter number of days is advisable, as the district can always renegotiate to add additional days.

Districts should remember that, in Texas, school districts are independent authorities, and, therefore, county officials cannot dictate when and how district facilities will operate as emergency shelters. Rather, the option to use school facilities as emergency shelters is ultimately left to the district, unless the governor declares a disaster and decides that the district's facilities are reasonably necessary to assist in coping with a disaster. Tex. Gov't Code § 418.017.

Q: May a school district continue to conduct school in a school facility that is also serving as an emergency shelter?

A: No hard rule exists that governs when a district may continue to conduct school in a facility that is also currently serving as an emergency shelter. This is a decision that requires school officials to exercise some discretion. School officials should take into account whether the presence of the evacuees in the shelter would materially and substantially interfere with school operations. If so, the district may want to suspend school operations until the school facility is no longer operating as an emergency shelter. In order to avoid losing numerous days of instruction, districts should make sure to state beforehand how many days the facility will operate as an emergency shelter. Districts also should consider adopting a policy that requires that the district first utilize facilities in which the school does not hold classes as often, such as a high school arts facility or gymnasium, before the school utilizes traditional school buildings as emergency shelters. Districts should take into account the availability of a sufficient number of police officers and other necessary employees to monitor transitional areas between the evacuees and students. Finally, districts should be mindful of registered sex offenders, who may be among the evacuees, and the district's policies and practices for allowing registered sex offenders on school campuses. For more information, see GKC(LEGAL) and (LOCAL).

Q: What kind of liability do school districts face when they open up school facilities for use as emergency shelters?

A: School districts will continue to have governmental immunity while the facility is operating as an emergency shelter. Therefore, districts may not be held liable for most claims occurring on school property. However, the Texas Tort Claims Act (TTCA) waives governmental immunity for specific governmental activities. Tex. Civ. Prac. & Rem. Code § 101.025. For instance, the TTCA waives governmental immunity for incidents that occur when a district

employee is operating a vehicle in the scope of his or her employment. Tex. Civ. Prac. & Rem. Code §§ 101.021, .051. Therefore, a district should keep this waiver of immunity in mind when contemplating whether to move evacuees from the emergency shelter in a vehicle operated by a district employee acting in the scope of his or her employment. Districts can also waive their immunity by acting in a proprietary capacity, rather than a governmental capacity. A district acts in a proprietary capacity when it conducts a function in its private capacity rather than as an arm of the government; it acts in its governmental capacity when it acts “in the performance of purely governmental matters solely for the public benefit.” *Tooke v. City of Mexia*, 197 S.W.3d 325 (Tex. 2006).

The Red Cross sometimes asks districts to sign an agreement that addresses the liability of the parties. While this agreement might seem attractive to districts, TASB Risk Management Services does not generally recommend that districts enter into these agreements with the Red Cross, as they usually grant the Red Cross a large degree of control over the emergency shelter, thereby removing control from the district and jeopardizing the district’s ability to provide an education to its students. Furthermore, districts do not need to enter into these agreements in order to be free from liability because they have governmental immunity from most claims, as explained above.

Finally, districts should be aware that if they move evacuees to a non-school site, the owner of that site may be liable for any claims arising from any occurrences on that site. Therefore, districts should inform the owner of the non-school site that it intends to send evacuees to that site.

Q: Are school districts required to provide food for the evacuees? Are they required to provide bedding and other toiletries?

A: No. School districts are not required to provide food, bedding, or toiletries for evacuees staying in their facilities. Therefore, districts should advise the public that they need to bring bedding, toiletries, and any other items that they would like to have while in the shelter. While not required to provide food, some districts choose to do so. The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture coordinates with state, local, and voluntary organizations to provide food for shelters and other mass feeding sites. For more information on this topic, see www.fns.usda.gov/disaster/disaster-assistance. Be aware that federal Title I funding for nutrition services is closely regulated; districts providing food that was purchased with money received through Title I may face penalties for doing so. Additionally, providing people with food purchased by the district could be construed as a gift of public funds. Districts are advised to consult with local counsel if possible before providing evacuees in their facilities with food purchased by the school district.

Q: Are school districts required to accept pets while operating their facilities as emergency shelters?

A: Districts are not required under the law to accept animals at their facilities while operating as an emergency shelter, aside from service animals. *See* Tex. Hum. Res. Code § 121.003(c) (stating that no person with a disability may be denied admittance to any public facility in the state because of the person’s disability and may not be denied the use of an assistance animal). *See* TASB Policy GA(LEGAL). Some agreements between districts and local emergency management or humane shelter personnel, however, stipulate that districts must accept animals when operating as emergency shelters. Such agreements may outline when districts will allow animals at their facilities and what kinds of animals the districts will allow. Districts should consider whether they want to allow animals at their facilities while operating as an emergency shelter. Again, districts will not be liable for any claims arising from the animals at the facilities, but practical considerations may exist, such as safety concerns, sanitation concerns, and nuisance concerns, such as noise and odors. For more information on this topic, see the federal government’s guidance at ready.gov/sites/default/files/documents/files/FEMAPetShelteringbestpractices2007.pdf, created in response to Hurricane Katrina.

Student Attendance

Q: What should a school district do if students miss a large number of school days due to an emergency?

A: School districts must provide for at least 75,600 minutes of instruction for students per school year. Tex. Educ. Code § 25.081(a). The Commissioner of Education, however, may approve fewer minutes of instruction for students if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools. Tex. Educ. Code § 25.081(b).

The Texas Education Agency (TEA) provides applications that districts may complete to request a waiver for missed instructional days (420 minutes per day) due to inclement weather or health and safety-related reasons, among other causes. TEA’s Website specifies, however, that the first two missed days of instruction must be made up. TEA also provides an application that a district may complete to request a waiver for instructional days with an attendance level of at least ten percentage points below the school year’s average attendance from its average daily attendance (ADA) calculations for the current school year when the low attendance is due to inclement weather or health and safety-related reasons, among other causes.

The forms to request these waivers can be found at tea.texas.gov/index2.aspx?id=7089&menu_id=932. TEA also publishes a school attendance handbook, links to which may be found at tea.texas.gov/Finance_and_Grants/Financial_Compliance/Student_Attendance_Accounting_Handbook/.

Payment and Attendance of Personnel

Q: Who is required to work when school district facilities are being used as emergency shelters?

A: The law does not require that any one person in the district be present at the school while its facilities are being used as emergency shelters. This decision is left to the district. It is a good idea to determine beforehand which employees or classes of employees are required to work during an emergency to avoid any surprise and confusion among employees during the emergency. Districts may wish to require more exempt employees to work, as these employees are not entitled to overtime under the Fair Labor Standards Act¹ (FLSA), but this is a local decision that districts should make after weighing all other pertinent factors.

Q: Will the district be reimbursed for extra labor costs incurred due to opening a shelter?

A: Texas Local Government Code section 418.021 provides that the governor may apply to the federal government on behalf of Texas school districts for a loan upon the governor's determination that a school district has suffered or will suffer a substantial loss of tax and other revenue due to a major disaster and that the district has demonstrated a need for financial assistance in order to perform its governmental functions. This provision could help districts alleviate the costs of paying employees during an emergency, as well as the overall costs of opening up the district's facilities for use during an emergency. Also, districts that participate in disaster preparation or disaster recovery may be eligible for funding from the state's disaster contingency fund, managed by the Texas Division of Emergency Management. Tex. Gov't Code § 418.073(c).

The Federal Emergency Management Agency's (FEMA) guidance provides that if, as a result of a disaster covered by a federal disaster declaration, a district incurs labor costs above what it would have incurred absent the disaster, the district may be eligible for reimbursement of those labor costs that are provided for in written policy prior to the disaster. Districts that intend to seek reimbursement of labor costs through FEMA will need a written policy. Including provisions in the district's local policy that address payment of wages during a disaster is one way to satisfy this requirement. TASB provides sample language that districts may wish to adopt in DEA(LOCAL). As always, it is essential that districts adjust the policy to match the district's practices, including whether the district wishes to have the policy cover exempt employees or whether the district would like to pay employees who are required to work during a disaster a higher rate.

¹ The FLSA is the federal law that requires payment of minimum wage and overtime to most employees. Employees who are employed in an administrative, professional, or executive status are exempt from minimum wage and overtime requirements.

Q: Can a school district pay a premium rate to nonexempt employees who are required to work while the district is closed?

A: Yes, provided the board approves such action. A district can always choose to pay a premium rate to employees who work during difficult times. Custodial and office staff may continue to work even while students are not in class. Equity may dictate that the district provide additional compensation to employees who work during inclement weather or an imminent threat to the health, safety, or welfare of the public, especially if the district continues to pay other employees who are idled. For example, some employers will pay hourly employees who work during closures a premium rate of time and one-half for regular hours. The district should be mindful that premium rate payments will affect an employee's hourly rate, for overtime purposes, during the relevant time period. As with other pay practices, premium rates should be approved by the board, with a finding that the payment serves a public purpose. A sample resolution for such purpose can be found in TASB's Regulation Resource Manual (RRM) at DEA(EXHIBIT).

For more information on the issue of payment of personnel in general, please see *Personnel Issues During School Closings*, available on TASB's Website at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/personnel_issues_during_sch_closings.aspx.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/emergency_procedures_districts.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

Updated January 2017

Sample: Emergency Meeting Notice/Agenda

Star of Texas Independent School District
54321 East Center Avenue
Center Star, Texas 78787

**Notice of Emergency Meeting
Board of Trustees
Star of Texas Independent School District
November 14, 2017**

An emergency meeting of the Board of Trustees of the Star of Texas Independent School District will be held on November 14, 2017, beginning at 7:00 p.m. at the Board meeting room at 54321 East Center Avenue, Center Star, Texas 78787.

The subjects to be discussed or considered or upon which any formal action may be taken are as follows:

1. Emergency repairs to elementary school facilities
2. Counseling resources for elementary students and staff
3. Budget amendments

An emergency or urgent public necessity exists that requires immediate action of the Board or an imminent threat to public health and safety or a reasonably unforeseeable situation exists, as follows:

1-3. The November 13, 2017 tornado damage to the elementary school facility during the school day and resulting emotional trauma of students and staff in response to this emergency.

If, during the course of the meeting, discussion of any item on the agenda should be held in a closed meeting, the board will conduct a closed meeting in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551, Subchapters D and E or Texas Government Code section 418.183(f). Before any closed meeting is convened, the presiding officer will publicly identify the section or sections of the Act authorizing the closed meeting. All final votes, actions, or decisions will be taken in open meeting. [See TASB Policy BEC(LEGAL)]

This notice was posted in compliance with the Texas Open Meetings Act on November 14, 2017, at 3:00 p.m.

For the Board of Trustees