Community colleges place a high priority on providing a safe campus environment and being prepared to effectively address emergencies as they arise. When engaging in safety planning or responding to emergencies, colleges should address certain legal and practical considerations.

**Safety and Emergency Preparedness**

**May a community college adopt policies to address campus safety?**


**Must community colleges adopt an emergency operations plan?**

Yes. Each community college must adopt and implement a multihazard emergency operations plan that applies to the college's facilities. The plan must address mitigation, preparedness, response, and recovery as defined by the commissioner of higher education and the Texas Division of Emergency Management. The plan must address: (1) employee emergency response training; (2) coordination with local emergency management agencies, law enforcement, and fire departments and state and local health agencies during an emergency; and (3) the implementation of a safety and security audit. Tex. Educ. Code § 37.108(a); see TASB Policy CGC(LEGAL).

Federal law requires a college to include in its emergency response and evacuation procedures methods for notifying the campus community about a confirmed significant emergency or dangerous situation involving an immediate threat to the health and safety of employees and students on campus, as defined by 20 U.S.C. § 1092(f)(6). See Emergency Response, below, for state requirements addressing the emergency alert system. The college is not required to send the alert if it will compromise emergency response. The emergency response and evacuation procedures must also address the annual publication of the procedures to employees and students and the annual testing of the procedures. 20 U.S.C. § 1092(f)(1)(J).

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1 An electronic version of this document is available on TASB College eLaw at tasb.org/Services/Community-College-Services/documents/campus-safety-and-emergency-management.aspx.

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TASB Community College Services
Must community colleges conduct a safety and security audit?

Yes. Community colleges must conduct a safety and security audit at least once every three years. The audit must be conducted to the extent possible in accordance with procedures developed by the Texas School Safety Center (TxSSC) or a similar public or private entity. Each college must report the results to the college's board of trustees and the TxSSC. Tex. Educ. Code § 37.108(b)-(c); see TASB Policy CG(LEGAL).

The current audit cycle began September 1, 2015 and ends August 31, 2018. Colleges must submit their reports to TxSSC using the Junior College Audit Reporting tool (JCARtool) by September 15, 2018.

What options do colleges have for providing security and law enforcement protection at their campuses?

Community colleges have several options for obtaining security services at college facilities. Colleges weigh these options based on factors such as need, size, location, and cost. See TASB Policy CHA.

**College peace officers:** A community college board may create its own police department by commissioning college peace officers. The peace officers must meet all minimum standards for peace officers established by the Texas Commission on Law Enforcement (TCOLE). College police officers have primary jurisdiction over all counties where the college owns, leases, or otherwise controls property. Tex. Educ. Code § 51.203; Tex. Code Crim. Proc. art. 2.12.

**Security personnel:** A community college may choose to employ security personnel. Security personnel are subject to the Texas Private Security Act and associated Texas Department of Public Safety (DPS) rules. Security personnel may be commissioned or not commissioned, a major distinction being that a security officer must be commissioned to be authorized to carry a weapon. Before the college may commission security officers, the college must hold a letter of authority from the DPS. Tex. Occ. Code ch. 1702; 37 Tex. Admin. Code ch. 35.

**Security company:** A community college may choose to contract with a private company to provide security.

**School marshals:** Community colleges may appoint one or more trained and licensed employees to serve as school marshals. School marshals are licensed under Texas Occupations Code section 1701.260, following a psychological exam and 80 hours of specialized instruction. School marshals operate under the same authority granted peace officers, including the power to make arrests, subject to board policy, and may only act as necessary to stop an offense threatening serious bodily injury or death to a
person on campus. A school marshal may be authorized to carry or possess a handgun on campus by written regulations adopted by the board and only at the campus specified by the board. The identities of employees designated as school marshals are confidential and may not be disclosed except as provided by law. Tex. Educ. Code §§ 51.220, .260; Tex. Code Crim. Proc. art. 2.27; 37 Tex. Admin. Code §§ 227.1(b), .3.

May a community college board meet in closed session to discuss campus safety?

When considering campus safety issues and related policy changes, community college boards may wish to conduct board meeting deliberations in closed session. Closed session deliberation may be permitted under relevant exceptions to the Texas Open Meetings Act (OMA):

- **Security personnel or devices:** To ensure the effectiveness of security personnel and devices, boards are permitted to deliberate the deployment, or specific occasions for implementation, of security personnel or devices in closed session. Tex. Gov't Code § 551.076.

- **Security infrastructure:** Similarly, boards may meet in closed session to deliberate security assessments or deployments relating to information resources technology; network security information; or the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices. Tex. Gov't Code § 551.089.

- **Personnel:** Boards may also meet in closed session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee. Tex. Gov't Code § 551.074(a)(1). This provision does not apply to independent contractors. Op. Tex. Att'y Gen. No. MW-129 (1980). Consequently, it would not apply to the employment of a security officer hired as an independent contractor.

- **Consultation with attorney:** A community college board may also seek legal counsel from the college's attorney in closed session to the extent the discussion is covered by the attorney-client privilege. Tex. Gov't Code § 551.071.

The exceptions only permit deliberation of potential initiatives to enhance college security through new measures, devices, or personnel in closed session. All final board action must take place in open session with a public vote. Tex. Gov't Code § 551.102.

May a member of the public see information related to campus safety, such as a college's emergency operations plan or safety and security audit?

Texas Education Code section 37.108 provides that information or documentation collected, developed, or produced during a safety and security audit is not subject to disclosure. This restriction on disclosure may also be extended to encompass a
college's emergency operations plan if the plan was developed as part of an audit. Based on the particular facts in one instance, the attorney general’s office has applied this law to conclude a school district may not release an emergency operations plan developed during a safety and security audit. Tex. Educ. Code § 37.108(c-1); Tex. Gov’t Code § 552.101; Tex. Att’y Gen. OR2011-16616 (2011).

Even if an emergency operations plan can be argued to be confidential under Section 37.108, the law expressly grants public access to some information related to the plan. For example, Section 37.108 excepts from the general restriction on disclosure documents that verify that the college has established an emergency operations plan, that the college has reviewed its emergency operations plan within the last twelve months, or that college employees have been trained to respond to an emergency. Tex. Educ. Code § 37.108(c-2).

The Texas Public Information Act (PIA) also includes provisions that may protect a college’s safety-related information from release, such as:

- security system specifications, operations, and locations. Texas Gov’t Code § 418.182.
- information related to an employee or officer that would subject the individual to a substantial threat of physical harm if disclosed. Tex. Gov’t Code § 552.152.
- information held by a law enforcement agency, including a community college police department, the disclosure of which would hinder law enforcement. Tex. Gov’t Code § 552.108.
- Information identifying a crime victim. Tex. Gov’t Code § 552.132(d)-(e).
- internal memoranda regarding policy recommendations and deliberations. Tex. Gov’t Code § 552.111.
In addition to TxSSC, who can help the college update the security of college facilities and improve training?

For more specific analysis of a college’s local risks and facilities, the college may contact its insurer for risk management support. For example, the TASB Risk Management Fund (RMF) provides members of the Workers’ Compensation, Property, Liability and Auto programs emergency management support and training at no additional charge.

Emergency Response

If an emergency occurs, how must a community college notify the college community?

Each community college must establish a system to timely alert students and employees by phone or email, and any other communication method the college deems appropriate, if an emergency occurs. When a student first registers or enrolls or an employee first begins work, the college must collect the person’s phone number or email and register them for the emergency alert system. A student or employee may choose not to participate in the alert system. The election must be renewed in writing or electronically, as chosen by the college, at the beginning of each academic year. Tex. Educ. Code §§ 51.217(g), .218.

May a community college board conduct an emergency meeting?

An emergency meeting may be held or an emergency item added to a meeting agenda if immediate action is required due to an imminent threat to public health and safety or a reasonably unforeseeable situation. A large number of people relocating from a disaster area qualifies as an emergency under this provision for a reasonable period immediately following the relocation. A community college must post a meeting notice at least two hours before the scheduled time of the meeting that clearly identifies the emergency or urgent public necessity justifying the short notice. If the meeting is prompted by a sudden relocation, the college must give notice of notify news media at least one hour before the meeting. Tex. Gov’t Code §§ 551.045, .047. See TASB Policy BD(LEGAL). A sample emergency meeting notice is provided at the end of this document.

May a college postpone a posted meeting due to a catastrophe?

If a catastrophe physically prevents a community college board from convening an open meeting that was otherwise properly posted, the board may convene the meeting in a convenient location within 72 hours pursuant to the emergency meeting
May a college hold a meeting by telephone conference call?

A community college board of trustees may hold a special meeting by telephone conference call if immediate action must be taken and convening a quorum at one location is difficult or impossible. The notice must specify as the meeting location the location where board meetings are usually held. The open portion of the meeting must be audible to the public in the posted location and broadcast online. Each part of the open meeting must be recorded and posted on the college's public website in an online archive. Tex. Gov't Code § 551.121.

May a board act absent a quorum in a disaster?

A board may act absent a quorum if: (1) the district's jurisdiction is located, at least in part, in an area declared a disaster by the president of the United States or the governor; and (2) a majority of the board is unable to attend due to the disaster. Tex. Gov't Code § 418.1102.

Do the competitive procurement requirements apply to college purchases made in response to an emergency?

State law provides an exception to the general requirement that goods and services, including construction, valued at $50,000 or more in the aggregate over a 12-month period be competitively procured in accordance with Texas Education Code section 44.031. A community college board of trustees is not required to use a statutory purchasing method to repair or replace destroyed or severely damaged equipment, facilities, or personal property if the board determines that the delay arising from following those procedures would prevent or substantially impair the conduct of classes or other essential college activities. Tex. Educ. Code § 44.031(a), (h); see TASB Policies CF and CM. The board may instead employ the contracting method that is best suited to the college's needs.

This exception does not extend to the statutory 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.
May the board delegate contracting authority in an emergency?

The college should first reference policy to determine existing delegation of purchasing authority. Board policies CF(LOCAL) and CM(LOCAL) define the scope and limitations on purchasing authority that a board has delegated to the college president or designee. Many colleges limit the delegated purchasing authority to a certain amount, including amounts less than $50,000. Consequently, even if competitive procurement is not required because the amount is less than $50,000 or an emergency exception applies, board approval of a contract for purchase of goods or services may still be required by a college's local policy.

The board may also make a special delegation of purchasing authority if an emergency, catastrophe, or natural disaster affects the college. In such an event, the board may delegate to the college president or other designated person the authority to contract for the emergency replacement, construction, or repair of college equipment or facilities if necessary for the health and safety of district students and staff. Tex. Educ. Code § 44.0312(c).

When entering into contracts for emergency repairs, colleges should exercise the usual due diligence, including legal review of contracts, before signing binding agreements. Contracts with unfavorable terms entered in haste may still be enforced to a college's detriment. A recent case in which a school district claimed fraud and price gouging as to restoration services provided in the wake of Hurricane Ike resulted in an adverse judgment and contract damages against the district. *Clear Creek Indep. Sch. Dist. v. Cotton Commercial USA, Inc.*, 529 S.W.3d 569 (Tex. App.—Houston [14th Dist.] 2017). Written contracts for emergency goods and services should be entered into only after review and approval by the college’s attorney.

May a college qualify for federal disaster relief?

The Federal Emergency Management Agency (FEMA) provides resources and prepares grants to assist with recovery from the effects of disasters. A community college damaged by the hurricane may be eligible for federal funds if it is located in a jurisdiction included in the presidential disaster declaration.

To be eligible for FEMA reimbursement, college purchases must comply with federal procurement laws. FEMA’s Procurement Disaster Assistance Team (PDAT) assists disaster assistance applicants with adhering to the federal procurement standards as well as FEMA policies and guidance associated with FEMA’s Public Assistance grants. While a college board may take action to suspend state procurement requirements under the emergency exception discussed above, such action does not necessarily result in a corresponding exception to the federal procurement rules. Federal law may be more stringent than state law with regard to procurement and emergency
exceptions. Consequently, if a college plans to file a FEMA claim for reimbursement, the college should work with FEMA and the college’s attorney to competitively procure purchases in a manner that is compliant with 2 C.F.R. §§ 200.317-.326.

May a community college request assistance from another local government?

The president of a community college board may request the assistance of another local government, such as a county, city, emergency services district, or other political subdivision, if the board president determines that the college requires assistance due to a civil emergency. The governing body of the other local government may then choose by resolution or other official action to authorize the local government to provide the requested assistance. Tex. Gov’t Code § 791.027.

The college also may submit a verbal or written request for assistance from another local government entity under the Texas Statewide Mutual Aid System. The other entity may, but is not required to, provide the assistance. A “local government entity” is a county, incorporated city, independent school district, community college, 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. “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(10)-(11), .109(d), .115(a), .1151, 421.001(3). See also TASB Policy GGE(LEGAL).

Can a community college pay a premium rate to nonexempt employees who are required to work while the college is closed?

Yes, provided the board approves such action. A college 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 college 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 college 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 college 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.
What steps must a college take if the college’s records are destroyed or damaged?

In addition to damage to physical resources, colleges may be facing damage to college records. In some instances, records that are required to be maintained permanently may be destroyed. The Texas State Library and Archives Commission (TSLAC) article Documenting Destruction of Records Damaged or Destroyed provides suggestions and resources for managing such records.
Sample: Emergency Meeting Notice/Agenda
Star of Texas Community College
54321 East Center Avenue
Center Star, Texas 78787

Notice of Emergency Meeting
Board of Trustees
Star of Texas Community College
May 14, 2018

An emergency meeting of the Board of Trustees of the Star of Texas Community College will be held on May 14, 2018, 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 North Campus facilities
2. Counseling resources for North Campus 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 May 13, 2018 tornado damage to the North Campus while class was in session 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 BDA(LEGAL)]

This notice was posted in compliance with the Texas Open Meetings Act on May 14, 2018, at 3:00 p.m.

For the Board of Trustees