



## What Laws Apply to Community Colleges?<sup>1</sup>

Navigating the complicated patchwork of state laws that apply to the community colleges can be daunting. A community college may be any of a number of different types of entities based on the structure of the law. Even if colleges are included in the definition of the referenced entity, another law, a court or attorney general opinion, or a state agency interpretation may except colleges from the application of the law. Despite these complications, community college employees and officials may discover common methods for determining the laws that apply to the colleges through the analysis of the application of common terms.

### 1. Is a community college a *junior college*?

Yes. Community colleges may generally assume that a law that references *junior colleges* applies to community colleges but review the scope of the law to determine if it has been limited only to certain colleges.

Most of the state laws that directly identify community colleges refer to them as a “junior colleges,” though some do refer to them as “community colleges.” Community colleges are considered to be part of the higher education system described by Texas Education Code title 3. Texas Education Code chapter 130 is dedicated specifically to “junior colleges.” *Del Mar Coll. Dist. v. Paxton*, No. 03-19-00094-CV, 2020 WL 3582886 (Tex. App.—Austin July 1, 2020, no. pet.) (mem. op.).

Though community colleges are generally considered junior colleges in the law, a specific law may only apply to a limited subset of community colleges. For example, only colleges that meet certain criteria, such as specific property valuation thresholds or prior pilot program participation may offer baccalaureate degrees. Tex. Educ. Code. §§ 130.303-.304, .307(b)-(b-1).

### 2. Is a community college an *institution of higher education*?

Often.

A community college is considered an *institution of higher education* by default since they are part of the higher education system as described above. If colleges are not excluded from the definition of *institution of higher education* for purposes of a particular law, by the law itself, a related law, a court or attorney general opinion, or state agency interpretation, a college should consider the term to include community colleges.

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<sup>1</sup> An electronic version of this document is available on [TASB College eLaw](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-what-laws-apply-community-colleges.pdf) at [tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-what-laws-apply-community-colleges.pdf](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-what-laws-apply-community-colleges.pdf).

Texas Education Code section 61.003 defines *institution of higher education* to include community colleges. Tex. Educ. Code § 61.003(8). Often, state laws refer to the definition found in Section 61.003 instead of creating a definition specific to that law.

Though Section 61.003 may be referenced by a law to define *institution of higher education*, the law itself, or a related law, may expressly exclude community colleges from the law's application. For example, Texas Education Code chapter 51, subchapter T, which addresses contracts for construction and repair of buildings at institutions of higher education, provides that the term *institution* means "means an institution of higher education as defined by Section 61.003, other than a public junior college." Tex. Educ. Code § 51.776(8).

Community colleges may also be subject to a special statute that can render the application of the law more ambiguous. For example, Texas Education Code section 51.001 provides that Texas Education Code chapter 51, subchapter A, regarding the control of funds applies to higher education institutions, "including each public junior college to the extent possible." Tex. Educ. Code § 51.001.

A community college may read the plain language of a statute and determine that a community college fits within the definition of *institution of higher education* for purposes of the statute but a state agency implementing the law has determined that it does not apply to the colleges. An agency may also use the term in its rules but does not in practice apply those rules to the colleges. For example, the plain language of Texas Education Code section 51.005, applicable to institutions of higher education, and Texas Government Code section 2101.011, applicable to state agencies as defined to include institutions of higher education, indicate that community colleges must complete the financial report described at Section 2101.011. However, the Texas Comptroller and the Texas Higher Education Coordinating Board have interpreted those laws not to apply to the colleges since the biennial Texas Appropriations Act contains financial reporting language specific to community colleges. Tex. Educ. Code § 51.005; Tex. Gov't Code §§ 2101.001(2), .011; General Appropriations Act, 87th Leg., R.S., S.B. 1, III-216.

### 3. Is a community college a *political subdivision*?

Most of the time.

Community colleges are *political subdivisions* by default. *Hader v. San Jacinto Jr. Coll.*, 519 F.2d 273 (5th Cir. 1975). If colleges are not excluded from the definition of *political subdivision* for purposes of a particular law, by the law itself, a related law, a court or attorney general opinion, or state agency interpretation, a college should consider the term to include community colleges.

Some laws do include an express definition of *political subdivision*. For example, the *political subdivision* is defined for purposes of the workers' compensation law to include a "junior college district." Tex. Labor Code § 504.001(3).

The Texas Election Code defines *political subdivision* to mean "a county, city, or school district or any other governmental entity that:

- (A) embraces a geographic area with a defined boundary;
- (B) exists for the purpose of discharging functions of government; and
- (C) possesses authority for subordinate self-government through officers selected by it."

Tex. Elec. Code § 1.005(13).

Because a community college governs within defined boundaries in the state, a community college is a political subdivision for purposes of the Texas Election Code definition.

However, some laws include a definition of *political subdivision* that excludes community colleges. For example, the state mutual aid law, the Texas Disaster Act, Texas Government Code chapter 418, defines *political subdivision* to include only cities and counties. Colleges are instead local governments for purposes of that law. Tex. Gov't Code § 418.004(6), (10). Colleges should therefore review the law to determine if a specific definition of *political subdivision* exists before concluding a law applies to the college.

#### 4. Is a community college a *local government*?

Typically.

Community colleges are *local governments* by default because they were created as political subdivisions of the state with local, not statewide, jurisdiction. Like *political subdivision*, if colleges are not excluded from the definition of *local government* for purposes of a particular law, by the law itself, a related law, a court or attorney general opinion, or state agency interpretation, a college should consider the term to include community colleges. Colleges should therefore review the law to determine if a specific definition of *local government* exists before concluding a law applies to the college.

Certain laws expressly define *local government*. For example, the Texas Interlocal Cooperation Act defines *local government* to include a "junior college district." Tex. Gov't Code § 791.003(4).

At times, a law excludes community colleges from the definition. For example, the law addressing bonds for local government sports centers, Texas Government Code chapter 1432, defines *local government* to mean only “a county, a municipality, or an independent school district.” Tex. Gov’t Code § 1432.002(2).

At times, a law or related laws reference both local governments and another entity, such as a state agency. Both terms may be defined to apply to community colleges but apply different or conflicting procedures to the different entities. A court or state agency may provide clarity as to the application of the provisions. Absent such determinations, if the law does not clarify the application, then an attempt may be made to read the provisions side-by-side.

For example, Texas Government Code section 2054.5191 establishes different cybersecurity training requirements for state agency and local government officials and employees. Both entities are defined to include community colleges. The Texas Department of Information Resources (DIR), the agency that oversees implementation of the statute, has resolved the conflict by issuing a determination stating that the colleges are state agencies for purposes of the statute since they must comply with the requirements of 19 Texas Administrative Code chapter 202. Tex. Gov’t Code §§ 2054.003(9), (13), .5191; Tex. Dep’t of Info. Res., [Statewide Cybersecurity Awareness Training](#).

## 5. Is a community college a *governmental entity*?

Typically.

Community colleges are *governmental entities* by default because they were created as political subdivisions of the state. Like *political subdivision* and *local government*, if colleges are not excluded from the definition of *governmental entity* for purposes of a particular law, by the law itself, a related law, a court or attorney general opinion, or state agency interpretation, a college should consider the term to include community colleges.

At times, a law specifically defines *governmental entity* for purposes of the law. For example, the contracting law applicable to governmental entities engaged in public works, Texas Government Code chapter 2269, expressly defines *governmental entity* to include a “a public junior college as defined by Section 61.003, Education Code.” Tex. Gov’t Code § 2269.002.

However, definitions of *governmental entity* may exclude colleges from the application of a law. For example, the law related to public defender’s offices defines *governmental entity* only in relation to counties. Tex. Code Crim. Proc. § 26.044. Colleges should therefore review the law to determine if a specific definition of *governmental entity* exists before concluding a law applies to the college.

## 6. Is a community college a *state agency*?

Sometimes.

A community college is considered a *state agency* only if the term is defined for purposes of the law to include colleges. For example, *state agency* is defined for purposes of Texas Government Code chapter 2054 to mean:

a department, commission, board, office, council, authority, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code.

Tex. Gov't Code § 2054.003(13).

The state law addressing veteran's employment preferences, Texas Government Code chapter 657, similarly defines state agency to mean "a board, commission, council, committee, department, office, agency, or other governmental entity in the executive, legislative, or judicial branch of state government, including an institution of higher education as defined by Section 61.003, Education Code." Tex. Gov't Code 657.001(1). Because both statutes reference Texas Education Code section 61.003, a definition that includes community colleges, this version of the state agency definition applies to community colleges.

At times, state laws define *state agency* similarly, but add an express exception for "junior colleges." For example, the State Purchasing and General Services Act defines state agency to exclude community colleges. Tex. Gov't Code § 2151.002.

At times, *state agency* may be defined to include community colleges but surrounding laws except colleges, whether stated as "junior colleges" or "institutions of higher education," from the application of the provisions in the law at issue. The exception may be sweeping but buried. For example, *state agency* includes a community college for certain provisions in Texas Government Code chapter 661, which addresses state employee leave. However, Texas Government Code section 661.915, a statute found in the miscellaneous provisions toward the end of the chapter, provides that Chapter 661 does not apply to community colleges. Tex. Gov't Code §§ 661.001, .207, .251, .915.

Texas Government Code chapter 2054, which is subject to the *state agency* definition described above, has a slightly ambiguous exception applicable to the entire chapter. Chapter 2054 "does not apply to a public junior college or a public junior college district, except as necessary to comply with information security standards and for participation in shared technology services, including the electronic government

project implemented under Subchapter I and statewide technology centers under Subchapter L.” Tex. Gov’t Code § 2054.0075. DIR generally makes a final determination as to which of these laws apply to the colleges.

Some definitions of *state agency* expressly limit the application to entities with statewide jurisdiction. For example, statutes referencing the Office of State-Federal Relations define *state agency* to include entities with “statewide jurisdiction.” Tex. Gov’t Code § 751.001(4). Because community colleges have local, not statewide, jurisdiction, those definitions do not apply to the colleges.

Because a community college may be a *state agency* for purposes of a law, colleges should determine if a definition of the term incorporates community colleges, then confirm that no related law, court or attorney general opinion, or state agency interpretation excludes the colleges from the application of the law. Absent a definition applying the term to community colleges, a community college is not a *state agency* for purposes of the law at issue.

## 7. Is a community college a *school district*?

Sometimes. A community college may be a *school district* for purposes of a law depending on the definition of the term and any laws specifically apply a school district law to the college but review related laws and state agency interpretation to determine if there are any exceptions.

Community colleges are not *independent school districts*, but in some instances may be considered a *school district*. This determination may be expressly set out in law. For example, Texas Education Code section 130.122 provides that a community college is considered a school district for purposes of the state constitutional provision permitting school districts to tax, Texas Constitution article VII, section 3. Tex. Educ. Code § 130.122(f). The determination may also be made by a court or other legal authority. For example, a community college board of trustees is considered a school district board of trustees for purposes of the Texas Open Meetings Act. Tex. Att’y Gen. Op. No. JM-340 (1985).

A law that on its face seems to broadly apply school district laws to community colleges is Texas Education Code section 130.084. Section 130.084 provides that a community college board of trustees “shall be governed in the establishment, management, and control of a public junior college in the district by the general law governing the establishment, management, and control of independent school districts insofar as the general law is applicable.” Tex. Educ. Code § 130.084(a).

Section 130.084 has been interpreted by the courts and other authorities to provide generally that community college boards are of the same basic character as school district boards of trustees. *Hander v. San Jacinto Junior Coll.*, 519 F.2d 273 (5th Cir. 1975). The provision has been cited to apply certain school district laws to community colleges. For example, it has been cited to apply the statutes addressing eminent domain, Texas Education Code section 11.055, and the ability to sue and be sued, Texas Education Code section 11.151(a), to the colleges. Tex. Educ. Code § 130.084(a); *Alamo Cmty. Coll. Dist. v. Obayashi Corp.*, 980 S.W.2d 745 (Tex. App.—San Antonio 1998, pet. denied); Tex. Atty. Gen. Op. No. CM-700 (1970).

Additionally, a law written for school districts may be applied through a direct statement that a school district or independent school district law applies to the colleges. For example, Texas Education Code section 130.010 applies the purchasing laws applicable to school districts and found in Texas Education Code chapter 44, subchapter B, to the colleges. Tex. Educ. Code § 130.010.

Because a community college may be a *school district* for purposes of a law, colleges should determine if a definition of the term incorporates community colleges, then confirm that no related law, court or attorney general opinion, or state agency interpretation excludes the colleges from the application of the law. Absent a definition applying the term to community colleges, a community college is not a *school district* for purposes of the law at issue.

## 8. What other types of entities may a community college be under law?

The entities described above are the most common terms applied to the community colleges under state law. However, colleges may also be an *employer*, a *special district*, a *person*, a *special taxing unit*, or other entities. Community colleges will only be one of these entities if the law expressly defines the term to include community colleges.

## 9. When in doubt, review TASB publications or give TASB Community College Services a call.

Community colleges that subscribe to TASB Community College Services' policy services may reference the legal framework published in TASB Community College Policy Reference Manual or with the college's local policy manual to find laws Community College Services has determined to apply to the colleges. The application of the laws may also be discussed in more detail in the FAQs published in [TASB College eLaw](#). The [Community College Legal Update](#) newsletter provides monthly updates on changes in the interpretation of the application of laws impacting the colleges.

Community college representatives from any of TASB's 50 member colleges who have questions about the application of a particular law may also contact TASB Community College Services at 800.580.1488 or [colleges@tasb.org](mailto:colleges@tasb.org).

For more information on community college law topics, visit TASB College eLaw online at [colleges.tasb.org/elaw](https://colleges.tasb.org/elaw).

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