



Emergency Management for Texas Public Schools

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I. What Constitutes a *Disaster* or *Emergency*

A. Declaration of Disaster

By law, the governor of the State of Texas is responsible for meeting the dangers presented by disasters and the disruptions caused by energy emergencies. Tex. Gov't Code § 418.011. By executive order or proclamation, the governor may declare a state of disaster if the governor finds a disaster has occurred or the threat of a disaster is imminent. A state of disaster may not continue for more than 30 days unless renewed by the governor. The legislature may terminate a state of disaster at any time. On termination by the legislature, the governor shall issue an executive order ending the state of disaster. Tex. Gov't Code § 418.014.

Disaster means 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, cybersecurity event, other public calamity requiring emergency action, or energy emergency. Tex. Gov't Code § 418.004(1).

An executive order or proclamation declaring a state of disaster activates the state emergency management plan and authorizes the deployment and use of any forces to which the plan applies and the use or distribution of any relevant supplies, equipment, materials, or facilities. Tex. Gov't Code § 418.015. During a disaster, the governor's office may act to suspend appropriate regulatory statutes and rules. Tex. Gov't Code § 418.0155.

B. Declaration of Emergency

By request of the chief executive officer of a county or city, the governor may proclaim a state of emergency and designate the area involved. An *emergency* exists in the following situations: (1) a riot or unlawful assembly by three or more persons acting together by use of force or violence; (2) a clear and present danger of the use of violence; or (3) a natural or man-made disaster. Tex. Gov't Code § 433.001.

After a state of emergency is proclaimed, the governor may issue reasonable directives calculated to control and terminate the emergency and protect life and property. Examples include control of public and private transportation, establishment of curfews, control over amusements and assemblies, and control of the sale or use of specified materials. Before a directive takes effect, reasonable notice must be given in the affected area through appropriate media. The governor may amend, modify, or rescind a directive in a manner similar to adoption of a directive during the state of emergency. Tex. Gov't Code § 433.002.

C. Federal Declaration of Emergency or Major Disaster

Under federal law, if an emergency or disaster is of such severity and magnitude that an effective response is beyond the capabilities of the affected state and federal assistance is needed, the governor of the affected state may request that the president of the United States declare that an emergency or major disaster exists. Sections 401 and 501 of the [Robert T. Stafford Disaster Relief & Emergency Assistance Act](#), (as amended), 42 U.S.C. § 5121, et seq.

Emergency means any occasion or instance for which, in the determination of the president, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. *Major disaster* means any natural catastrophe (including hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the president causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. § 5122 (1), (2).

The declaration of a federal emergency or major disaster sets in motion the coordination, support, and resources of the federal government as authorized by the Stafford Act and other laws. For more information on federal laws related to disaster declarations and relief, see FEMA's [Disaster Authorities](#).

II. Federal Incident Management

A. FEMA

Title V of the Homeland Security Act of 2002 transferred the functions, personnel, assets, and liabilities of Federal Emergency Management Agency (FEMA) to the Department of Homeland Security (DHS). Following the major disasters of Hurricanes Katrina, Sandy, Harvey, Irma, and Maria, response processes have been streamlined and FEMA has been elevated to a distinct agency within DHS, with the FEMA Administrator acting as a principal advisor to the president.

B. NIMS and ICS

As part of the move to DHS, the secretary of homeland security was directed to create a [National Incident Management System](#) (NIMS) to be incorporated into a National Response Plan. “This system will provide a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. To provide for interoperability and compatibility among federal, state, and local capabilities, the NIMS will include a core set of concepts, principles, terminology, and technologies covering the incident command system [ICS]; multi-agency coordination systems; unified command; training; identification and management of resources (including systems for classifying types of resources); qualifications and certification; and the collection, tracking, and reporting of incident information and incident resources.” *Homeland Security Presidential Directive 5 at HSPD-5, Management of Domestic Incidents*. In Texas, by [Executive Order](#), the governor has declared the NIMS the state standard for incident management.

C. School Districts and the National Response Framework

An application of the NIMS, the [National Response Framework](#) is a guide to how the nation responds to all types of disasters and emergencies, with scalable, flexible, and adaptable capacities to align roles and responsibilities. Local governmental entities are expected to have a chief executive and a designated emergency manager. In Texas, by [Executive Order](#), the governor has established an Emergency Management Council and designated each mayor as the emergency management director for each Texas city.

School districts are not listed among the local governmental units in the National Response Framework. In fact, schools are mentioned only as a component of recovery, as when schools reopen following a disaster. Through the Department of Education, however, the federal government advises school officials to review the 2013 [Guide for Developing High-Quality School Emergency Operations Plans](#) first, then look in detail at the 2019 [The Role of Districts in Developing High-Quality School Emergency Operations Plans](#). Both align with the National Preparedness System and incorporate NIMS and ICS to provide a standardized approach for incident management and coordination with first responders.

III. State Incident Management

A. Texas Division of Emergency Management (TDEM)

The Texas Division of Emergency Management (TDEM) coordinates the state emergency management program, which is intended to ensure the state and its local governments respond to and recover from emergencies and disasters and implement plans and programs to help prevent or lessen the impact of emergencies and disasters. The responsibilities for local governments to

participate in and receive training on the state's emergency management program apply only to cities and counties, not local school districts. 37 Tex. Admin. Code § 7.1. For more information, see "Local Government Responsibilities," [Texas Response and Recovery Guide](#).

B. Texas Statewide Mutual Aid System

School districts are specifically included in Texas' statewide mutual aid system. Like other local governmental entities, a school district may provide mutual aid assistance on request from another local government entity or organized volunteer group. The superintendent, with the approval and consent of the board president, may provide that assistance while acting in accordance with district policies and procedures. See Tex. Gov't Code § 418.109(d) (requiring the highest ranking officer to receive approval and consent from the highest ranking governing official before providing assistance in accordance with the entity's policies and procedures). See TASB Policy GRC(LEGAL). When providing mutual aid assistance under the system, the response must follow certain guidelines. Specifically, the response must be organized in accordance with NIMS; the personnel, equipment, and resources of a responding local government entity being used in the response effort must be under the operational control of the requesting local government entity unless otherwise agreed; and direct supervision and control of personnel, equipment, and resources and personnel accountability must remain the responsibility of the designated supervisory personnel of the responding local government entity, subject to certain specifications. See Tex. Gov't Code § 418.1152 (outlining the supervision and control of the mutual aid assistance system). In addition, Texas, and therefore Texas school districts, participate in an interstate Emergency Management Assistance Compact for mutual aid among states. Tex. Health & Safety Code ch. 778.

C. Regional Projects

Texas is divided into 24 area councils of government (COGs). Regions work closely with the Office of the Governor's Homeland Security Grants Division to obtain program and project funding for regional and local projects. COGs provide guidance to their local jurisdictions on funding applications as well as management and administration tasks for grant funding.

IV. Anticipating Hazards

A. Weather Events

NOAA Weather Radio (NWR) is a nationwide network of radio stations that broadcast National Weather Service warnings, watches, forecasts, and other hazard information 24 hours a day. [Texas stations](#) are listed online. Information regarding national, weather-related hazards can be found on the [National Hurricane Center's website](#).

The Texas Education Agency (TEA) and the Texas School Safety Center (TxSSC) offer a [Hurricane Quick Reference Guide for School Administrators](#) for superintendents or their designees with a checklist of tasks that school districts should accomplish in order to meet standard protocols for hurricane/severe weather prevention, mitigation, preparedness, recovery and response efforts.

B. Cyber Threats

In addition to natural disasters, infectious disease, and other hazards, school districts also must prepare for cyber threats. These incidents maybe accidental or intentional. Compromised systems and data disrupt essential operations, expose personally identifiable information of students and employees, and lead to lengthy and expensive recovery. Readiness and Emergency Management for Schools (REMS) Technical Assistance (TA) Center, [Cybersecurity for Schools Fact Sheet](#). For an overview of what cybersecurity means for Texas schools, common cyberattack methods, and relevant laws, see TASB Legal Services' [School Cybersecurity - Getting Started](#).

Texas Education Code section 11.175 requires school districts to adopt a cybersecurity policy. A district cybersecurity plan will typically address steps to prevent, mitigate, resolve, or recover from cybersecurity issues and incidents. A district's cybersecurity plan may not conflict with the Department of Information Resource's (DIR) adopted information security standards for institutions of higher education outlined in the Texas Administrative Code. Tex. Educ. Code §§ 11.175(b), (c), 2054.133; 1 TAC § 202. See also TASB Model Policy CQB. For more information, see TASB Legal Services' [School Cybersecurity - Texas Requirements](#).

C. Public Health Disasters and Communicable Disease

In Texas, a *public health disaster* means the governor has declared a disaster and the Commissioner of State Health Services has determined that there exists an immediate threat from a communicable disease that poses a high risk of death or serious long-term disability to a large number of people and creates a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

Communicable disease means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment. Tex. Health & Safety Code § 81.003(1), (7).

School districts face challenges from communicable diseases even in years without a public health disaster. For more information about keeping students and staff safe from illness, see TASB Policy GRC and TASB Legal Services' [Responding to the Risk of Infectious Disease in Public Schools](#).

D. Other Disasters

The [Emergency Alert System](#) (EAS) is a national public warning system commonly used by state and local authorities to deliver important emergency information, such as weather and AMBER alerts, to affected communities. EAS participants—radio and television broadcasters, cable

systems, satellite radio and television providers, and wireline video providers—deliver local alerts on a voluntary basis, but they are required to provide the capability for the president to address the public during a national emergency.

TEA provides [Weather and Disaster Information](#) with resources for school districts affected by extreme weather, natural disasters, or man-made disasters. TEA also offers numerous [School Safety](#) resources.

E. Terroristic Threats and Gang Violence

As part of the state’s homeland security efforts, Texas created the Texas Fusion Center to serve as the state’s primary entity for the planning, coordination, and integration of government communications capabilities to help implement the governor’s homeland security strategy and ensure an effective response to a homeland security emergency. The Fusion Center receives and analyzes information, assesses threats, and issues public warnings related to homeland security emergencies. Tex. Gov’t Code ch. 421.

Following the May 2018 shooting at a high school campus in the Santa Fe Independent School District, a school safety-specific capability was added to the Texas Department of Public Safety’s iWatchTexas app and website. The iWatchTexas app and website allow citizens to report suspicious activities or behaviors that may indicate criminal, terroristic, or school safety-related threats. As part of the Texas Homeland Security Strategic Plan, the Texas Department of Public Safety (DPS) is tasked with coordinating with TEA and the Texas Higher Education Coordinating Board (THECB) on related awareness campaigns. Additionally, the plan calls for a Fusion Center School Safety Working Group to refine school-related threat intelligence gathering activities found on pages 49-51 of [The Texas Homeland Security Strategic Plan](#).

F. Threat Assessment

Following the passage of Senate Bill 11 in 2019, Texas became the first state to mandate that schools adopt a process for threat assessment. Each district must establish a threat assessment and safe and supportive school team to serve at each campus and adopt policies and procedures for the teams. The team is responsible for developing and implementing the safe and supportive school program created in accordance with rules to be adopted by the commissioner of education. For more information, see TASB Legal Services’ [School Safety After Senate Bill 11](#).

G. School Surveillance

Security cameras: School surveillance implicates a student’s right to privacy and parental rights. Texas public schools can make video or audio recordings of students without parental consent for purposes of safety, including the maintenance of order and discipline in common areas of the school or on school buses. Tex. Educ. Code § 26.009. Federal and state law govern the circumstances in which a recording of a student can be released without the parent’s prior

written consent, including release to law enforcement in an emergency. See 34 C.F.R. § 99.31 (defining when the Family Education Rights and Privacy Act (FERPA) does not require consent to release personally identifiable student information). See also U.S. Dep't of Educ., [FAQs on Photos and Videos under FERPA](#) (discussing when a photo or video of a student is an education record under FERPA).

Metal detectors: Using metal detectors in schools also implicates a student's right to be free from unreasonable searches and seizures under the Fourth Amendment. See *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (generally requiring a school administrator's search of a student to be reasonable in inception and in scope). Currently, many districts have metal detectors in disciplinary alternative education programs (DAEP) but they are not as common at regular campuses. For more information, see TASB Legal Services' [Metal Detectors in Schools](#).

V. School District Emergency Management

A. Safety and Security Committees

Each school district is required to establish a school safety and security committee. The committee includes both school district officials and representatives of local first responders and the community. The committee makes periodic recommendations about emergency planning and school safety, including changes to the district's multihazard emergency operations plan. The committee is subject to the Texas Open Meetings Act. Tex. Educ. Code § 37.109. For more information, see TASB Legal Services' [School Safety and Security Committees](#).

B. Multihazard Emergency Operations Plans

Each school district must adopt and implement a multihazard emergency operations plan (EOP) for use in the district's facilities. The plan must address prevention, mitigation, preparedness, response, and recovery as defined by the TxSSC in conjunction with the governor's office of homeland security and the commissioner of education. Tex. Educ. Code § 37.108. For details on the EOP contents and adoption, see TASB Legal Services' [Adopting and Implementing a Multihazard Emergency Operations Plan \(EOP\)](#).

C. Safety and Security Audits

At least once every three years, each school district must conduct a safety and security audit of the district's facilities. The audit must follow standards set by the TxSSC, and the audit results must be reported to the board of trustees and the TxSSC. Tex. Educ. Code § 37.108. For details on the audit and the consequences of noncompliance, see TASB Legal Services' [Adopting and Implementing a Multihazard Emergency Operations Plan \(EOP\)](#).

VI. School Board Meetings During Emergencies

A. Postponing a Meeting

A governmental body, including a school board, that is prevented by a *catastrophe* from convening an open meeting that was otherwise properly posted may convene the meeting in a convenient location within 72 hours if the action is taken in good faith and not to circumvent the Open Meetings Act (OMA). If the governmental body is unable to convene the open meeting within 72 hours, the governmental body may subsequently convene the meeting only if the governmental body gives written notice of the meeting as required by the OMA. A *catastrophe* means a condition or occurrence that interferes physically with the ability of a governmental body to conduct a meeting, including: (1) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm; (2) power failure, transportation failure, or interruption of communication facilities; (3) epidemic; or (4) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence. Tex. Gov't Code § 551.0411(b), (c).

B. Advancing the Time of a Meeting

With knowledge of a coming weather event, school district officials sometimes ask if it is acceptable to begin a previously posted meeting early. The OMA requires strict compliance. TASB Legal Services does not recommend that school boards begin a meeting any earlier than the time provided in a posted notice unless the meeting is canceled and a new emergency meeting is called in accordance with Section 551.045.

C. Emergency Meetings

In an emergency or when there is an urgent public necessity, posting notice for only one hour is sufficient. The one-hour notice may be to call an emergency meeting or to add an agenda item at the last minute to a previously posted meeting. The board may not deliberate or take action on a matter at a meeting for which emergency notice was posted unless the action is directly related to responding to the emergency or urgent public necessity identified in the notice. Similarly, the board may not deliberate or take action on a matter at a meeting for which supplemental emergency notice was posted unless the action is directly related to responding to the reason for the supplemental notice or an agenda item listed on the original meeting notice.

An *emergency* or an *urgent public necessity* exists only if immediate action is required of a governmental body because of an imminent threat to public health and safety or a reasonably unforeseeable situation, including: fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm; power failure, transportation failure, or interruption of communication facilities; epidemic; riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence; or the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction for a reasonable period immediately following the relocation. Tex. Gov't Code § 551.045.

In the emergency notice or emergency supplemental notice, the governmental body must clearly identify the emergency or urgent public necessity. Tex. Gov't Code § 551.045(c). In addition, the officer who calls an emergency meeting or adds an emergency item to the agenda must notify the news media of the emergency meeting or emergency item. Tex. Gov't Code § 551.047.

D. Remote Meetings

By teleconference: A board meeting may be held by teleconference only if: (1) there is an emergency or public necessity as defined by the OMA, and (2) it is difficult or impossible to convene a quorum of the board at one location Tex. Gov't Code § 551.125(b).

By videoconference: A member or employee of a governmental body may participate remotely in a meeting of the governmental body by means of a videoconference, if the videoconference complies with the specific requirements set out in Texas Government Code section 551.127. To conduct a meeting by videoconference, a quorum of the governmental body must be physically present at one location (with an exception for governmental bodies that extend into three or more counties), and the posted location of the meeting must be the location where the quorum is physically present. Each open portion of a meeting held by videoconference must be visible and audible to the public, and the governmental body shall make at least an audio recording of the open portions of the meeting available to the public. The audio and video quality of the videoconference must meet or exceed statutory standards, including guidelines set by the [Texas Department of Information Resources](#) (DIR). Tex. Gov't Code § 551.127; 1 Tex. Admin. Code §§ 209.1-.11. For more information, see TASB Legal Services' [Remote Participation in Board Meetings](#).

Suspended laws: During the period of a disaster declaration, the governor has the power to suspend specific state laws, including provisions of the OMA. For example, on March 16, 2020, Governor Greg Abbott suspended portions of the OMA to allow telephonic or videoconference meetings and to reduce physical congregations during the COVID-19 disaster. For more information, see TASB Legal Services' article [Texas Governor Suspends Certain Provisions of Open Meetings Act Due to Coronavirus \(COVID-19\)](#).

E. Quorum

Notwithstanding any other law, a quorum is not required for the governing body of a local governmental entity (including a school district) to act if the entity'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 governing body are unable to be present at a meeting of the governing body as a result of the disaster. Tex. Gov't Code § 418.1102.

VII. Emergency Delegation of Authority

During an emergency event, the district may need to act quickly to make decisions or authorize purchases that would be delayed if the items had to be brought forward for a board vote. In some instances, the board may have difficulty arranging for meetings, even remotely. In such

circumstances, boards may want to use a resolution to delegate significant emergency authority for the superintendent to act with final decision-making authority in key areas for a specified amount of time. That said, the goal of an emergency resolution should not be simply to avoid conducting board meetings. A time of crisis is one in which the board should remain engaged in, not absent from, its oversight role. In general, TASB Legal Services advises school boards to make delegations on a case-by-case basis, with specific legal advice, rather than wholesale through a comprehensive resolution that alters the governance structure of the school district. The following are examples of potential delegations for a board's consideration.

A. TEA Waivers

With certain exceptions, Texas Education Code section 7.056 allows a district to apply to the commissioner for a waiver of a requirement, restriction, or prohibition imposed by the Texas Education Code or rule of the State Board of Education or commissioner. Normally a waiver must be submitted in writing not later than the 31st day before the district intends to take action requiring a waiver, and the application must include a written plan approved by the board of trustees that states the objective of the waiver, as well as comments from the district's site-based decision-making committee.

During the COVID-19 disaster, TEA indicated in its [COVID-19 FAQ: School Boards](#) that the Agency would accept a waiver request from a superintendent if the board had taken action to delegate authority to the superintendent to make the waiver request. The waiver request had to include evidence of the superintendent's authority (e.g., a copy of the board's resolution), and TEA recommended that the board ratify the waiver request at a future meeting.

B. Hiring Authority

Working with its school attorney or TASB policy consultant, a board can adopt a resolution or policy that delegates more hiring authority to the superintendent either permanently or for a fixed amount of time. This delegation might make it easier for the superintendent to renew existing contracts or hire new certified employees while schools are closed. Only the board, however, may propose the nonrenewal of term contracts or terminate probationary contracts. Board engagement will still be necessary and appropriate during the spring contract season.

C. Purchasing Authority

Contracts valued above superintendent's purchasing authority in CH(LOCAL): If a board realizes the dollar amount of purchasing authority delegated in CH(LOCAL) is too low to allow the superintendent to buy necessary equipment or materials, the board may act to change policy or temporarily delegate greater purchasing authority. Texas Education Code section 44.0312(c) specifically states that in the event of a catastrophe, emergency, or natural disaster affecting a school district, the board may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under this subchapter if emergency replacement, construction, or repair is necessary

for the health and safety of district students and staff. This delegation of contracting authority is not automatic and requires board action as to the specific authority granted by the board to the superintendent or designee, but it may be done by the board in local policy or by adoption of a resolution when the need arises. The greater authority may be granted with or without a need to report to the board, and with or without a need for the board to ratify purchases.

Delegation of authority to make purchases in excess of the dollar amounts permitted under CH(LOCAL) is not the same as the board's suspension of competitive procurement requirements. Unless a board adopts a resolution to suspend competitive procurement requirements as discussed below, the administration's purchases must be made by a procurement method required by law.

Suspension of competitive purchasing requirements: As described in more detail below, under Texas Education Code section 44.031(h), the authority to make purchases without following competitive purchasing requirements requires that *the board* first determine that the delay posed by the methods stated in Texas Education Code section 44.031(a) would prevent or substantially impair the conduct of classes or other essential school activities. For immediate, emergency repairs or replacement in an amount that would otherwise require competitive purchasing, a board must (1) determine that an emergency exists, and (2) act to suspend procurement rules in accordance with the law. For a sample resolution delegating purchasing authority and suspending competitive procurement requirements, see TASB Legal Services' [*Resolution of the Board Regarding Emergency Purchasing*](#).

VIII. Purchasing and Public Assistance (FEMA Reimbursement)

A. Emergency Procurement under Texas Law

General rule: The general procurement rule under state law requires that goods and services, including construction, valued at \$50,000 or more in a 12-month period be competitively procured in accordance with Texas Education Code section 44.031.

Emergency exceptions: Texas Education Code section 44.031(h) provides an emergency exception to the general procurement requirements. If school equipment, a school facility or part of a school facility, or personal property is destroyed or severely damaged, 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 the purchasing methods required by law to contract for replacement or repair of the damage. Tex. Educ. Code § 44.031(h). In addition, Section 44.0312(c), described above, allows the board to delegate to the superintendent or other designee emergency purchasing authority.

Note that both Texas Education Code provisions regarding purchasing during an emergency are focused narrowly on replacing or repairing existing facilities and equipment. Section 44.031(h), allowing suspension of competitive procurement, addresses "replacement or repair" of facilities and equipment, while Section 44.0312(c), on board authority, addresses contracts "for

the replacement, construction, or repair of school equipment or facilities.” Procurement of additional resources, such as buying new technology to support remote instruction during a school closure, may not fit within the language of these two state laws. Rather than relying on either statute, boards might be better served by increasing the dollar amount of the superintendent’s purchasing authority and making purchases through means that satisfy competitive procurement requirements, such as a DIR catalogue purchase or an interlocal purchasing cooperative.

Construction projects: TASB Policies CH and CV generally set forth the law and local policies pertaining to school facility construction contracts and competitive procurement, including Texas Government Code chapter 2269. The emergency exception of Texas Education Code section 44.031(h), discussed above, relieves districts only from compliance with the purchasing methods; districts 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. In addition, construction work to repair and replace facilities will require the involvement of an architect and engineer with no emergency exception. See TASB Policy CV(LEGAL).

State and local funds only: Note also that these statutes are limited to purchases made with state and local funds. Procurement with federal funds must be done in accordance with federal law, as described below.

Cautionary case on emergency contracts: Despite the urgency, when entering into contracts for emergency repairs, districts should exercise the usual due diligence, including legal review of contracts, before signing binding agreements. Contracts with unfavorable terms entered in haste still may be enforced to a district’s detriment. After Hurricane Ike, a Texas district claimed to be the victim of fraud and price gouging related to restoration services, but the result was an adverse judgment and contract damages against the district. *Clear Creek Indep. Sch. Dist. v. Cotton Commercial USA, Inc.*, No. 14-16-00466-CV, 2017 WL 3271173 (Tex. App.—Houston [14th Dist.] Aug. 1, 2017).

B. Federal Disaster Assistance and Procurement

FEMA helps local governments and other entities respond to and recover from major disasters or emergencies. After an event, communities need help to cover their costs for debris removal, life-saving emergency protective measures, and restoring public infrastructure. A school district may apply for federal funds if [Public Assistance](#) is activated for the emergency or major disaster. Work is categorized as emergency work or permanent work, and projects must be completed within the regulatory deadlines. FEMA’s roles are to determine the amount of funding, participate in educating the applicant on specific program issues and procedures, assist the applicant with the development of projects, and review the projects for compliance. Detailed information is found in the [FEMA Public Assistance Program and Policy Guide](#) (PAPPG).

School districts are categorized as non-state entity applicants. Applicants may not duplicate benefits with insurance and must comply with relevant federal laws, including environmental standards and federal procurement standards. A school district seeking Public Assistance with federal funds must engage in procurement in accordance with federal law (2 C.F.R. § 200) and FEMA guidance, as applicable.

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. In its [procurement guidance](#), FEMA explains that federal law may be more stringent than state law with regard to procurement and emergency exceptions. See FEMA's [Key Points for Non-State Entities on How to Avoid the Top 10 Procurement Under Grant Mistakes](#). Consequently, if a district plans to file a FEMA claim for reimbursement, the district should work with FEMA and its school attorney to competitively procure purchases in a manner that is compliant with 2 C.F.R. §§ 200.318-.327.

C. Preparation Before an Event

FEMA permits certain procurement steps to be taken before disaster strikes that will still qualify for Public Assistance grants. In its fact sheet on [Purchasing Under a FEMA Award: Prepare Before a Disaster](#), FEMA permits a non-state entity, like a school district, to establish a pre-qualified list of vendors vetted in advance that may be used to satisfy procurement needs before, during, and after a disaster. FEMA also allows pre-positioned contracts to conduct a deliberate procurement process outside of the pressure and immediate demands of a disaster and helps to ensure contractors are readily available to perform work quickly after an incident occurs. These tools may be useful to districts, including coastal districts, that are at higher risk for weather incidents. Since these procurements ultimately may be paid with state, local, or federal dollars, both state and federal purchasing laws should be considered when pre-qualifying vendors and establishing advance contracts.

IX. Other Financial Matters—VATRE

If a school board adopts a tax rate that exceeds its Voter-Approval Tax Rate (VATR), it must hold a Voter-Approval Tax Rate Election (VATRE) for the voters of the district to approve that rate. For the year following a disaster, however, a higher tax rate may be available without conducting a VATRE. When increased expenditures are necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not drought, that has impacted a district and the governor has requested federal disaster assistance for the area in which the district is located, a VATRE is not required to approve the tax rate adopted by the board for the year following the year in which the disaster occurs. A tax rate adopted under this exception applies only in the year for which it is adopted. If a district adopts a rate under this exception, the amount by which that rate exceeds the district's VATR for that tax year may not be considered when calculating the district's VATR for the next tax year. Tex. Tax Code § 26.08(a-1).

In addition, a district located in an area declared a disaster by the governor may hold an election to adopt an M&O tax rate during the two-year period following the declaration without conducting an efficiency audit. Tex. Educ. Code § 11.184(b-1).

X. Records Management and PIA

A. FEMA Documentation

FEMA explains in its [procurement guidance](#) that, in addition to documenting the disaster's impact on the district, the district should document its selection of the appropriate procurement method and contract, efforts to follow the socioeconomic affirmative steps, an independent cost estimate and cost or price analysis, and its selection of a responsible contractor. Section VIII.D. of the [PAPPG](#) indicates that an applicant may be asked to submit the following to support contract costs: procurement policy; procurement documents (i.e., requests for proposals, bids, selection process, etc.); cost or price analysis for contracts above the simplified acquisition threshold; contracts, change orders, and summary of invoices; dates worked; and documentation that substantiates a high degree of contractor oversight, such as daily or weekly logs, records of performance meetings.

The district may also apply for public assistance with certain management costs. Management costs are defined as indirect costs, direct administrative costs, and other administrative expenses associated with a specific project under a major disaster or emergency. Required documentation may include activity logs, payroll data, procurement procedures, contracts, and invoices.

B. Damaged records

During an emergency, districts may face damage to school district records. In some instances, records that are required to be maintained permanently may be destroyed. The Texas State Library and Archives Commission (TSLAC) offers guidance to local governments responsible for preserving public records.

First, if possible, take steps before disaster strikes to back up and protect essential records. Local Government Bulletin F outlines minimum and enhanced storage standards for records of permanent value. The minimum standards offer protection from fire, water, steam, structural collapse, unauthorized access, theft, and other hazards. For more information, see TSLAC's blog entry on [emergency preparedness](#).

If records are lost or destroyed, the district must document their [premature destruction](#). TSLAC has created an optional template for this documentation.

C. Public Information Act

Response time based on business days: Normally, when the district receives a Public Information Act (PIA) request, the district must promptly produce public information for inspection, duplication, or both. “Promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay. If the district cannot produce public information for inspection or duplication within 10 business days, the district must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication. Tex. Gov’t Code § 552.221.

Suspension for catastrophe: If a district is impacted by a catastrophe, as defined by the PIA, and follows required procedures, the PIA will allow up to two suspension time periods (a maximum of 14 consecutive calendar days) during which compliance with the PIA will not be required. The district must submit a notice of the suspension period or periods to the attorney general’s office on a [form provided by the attorney general](#) (“Catastrophe Notice”), and provide notice to the public in a place readily accessible to the public and in each location that the board is required to post notice of a board meeting under the Texas Open Meetings Act. Tex. Gov’t Code § 552.233(b)-(f). The attorney general will continuously post on the attorney general’s website each submitted notice for one year from the date the office receives the notice. Tex. Gov’t Code § 552.233(i). A request for public information received by a school district during a suspension period is considered to have been received by district on the first business day after the date the suspension period ends. Additionally, the requirements of the PIA related to a request for public information received by the district before the date an initial suspension period begins are tolled until the first business day after the date the suspension period ends. Tex. Gov’t Code § 552.233(g), (h).

AG guidance on business days: During the COVID-19 catastrophe, the Texas attorney general issued guidance indicating that use of the suspension process was appropriate only if a school district was open for business but determined that a catastrophe had interfered with its ability to comply with the PIA. Suspension was not necessary if the school district was not open for business.

The AG offered the following [guidelines](#) for calculating business days:

- Holidays observed by the governmental body are not business days.
- Weekends are not business days.
- Skeleton crew days are not business days.
- A day on which a governmental body’s administrative offices are closed is not a business day.

- If a governmental body has closed its physical offices for purposes of a public health or epidemic response or if a governmental body is unable to access its records on a calendar day, then such a day is not a business day, even if staff continues to work remotely or staff is present but involved directly in the public health or epidemic response.

XI. Use of School Facilities as Shelters

Local choice, absent action by governor: As independent school districts, each district has the choice whether to open its facilities as emergency shelters. The only exception is if the governor determines that the district’s facilities are reasonably necessary to assist in coping with a declared disaster. Tex. Gov’t Code § 418.017. Once a disaster has been declared, Texas Government Code section 418.108(f) grants certain powers to county judges and mayors, such as ordering evacuation from, or controlling ingress to and egress from, a disaster area. While the Texas Government Code grants some of the governor’s emergency powers to local governments, these powers do not explicitly include commandeering private property. Consequently, only the governor, not local government officials, may commandeer property in response to a disaster. Tex. Att’y Gen. Op. No. KP-0304 (May 7, 2020).

Local policy: Although school districts usually are not required to open their facilities as emergency shelters, many are willing to do so. Emergency management personnel often prefer to use school district facilities as emergency shelters because school campuses comply with the Americans with Disabilities Act and offer commercial grade kitchens, showers, and other resources. A district’s policy at GKD(LOCAL) may provide that the district will open its facilities as emergency shelters. Many school districts that choose to open their facilities as emergency shelters operate in conjunction with neighboring districts and local emergency management personnel. Coordination may be arranged through the district’s regional Office of Emergency Management.

Operation by third party (e.g., Red Cross): Many districts that open their facilities as emergency shelters operate in tandem with the Red Cross or 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. When a district is relinquishing control over some or all of its operations, TASB encourages the district to enter into written agreements or memoranda of understanding (MOUs) that outline the length of time for the operation, as well as the parties’ liabilities and responsibilities while operating the emergency shelter. A school district maintains its governmental immunity from personal injury claims during emergency operations.

Providing shelter and instruction at the same time: No law or rule governs when a district may continue to conduct school in a facility that is serving as an emergency shelter. School officials should consider whether the presence of 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. To avoid losing days of instruction, districts may want to limit in advance how many days the facility will operate as an emergency shelter. Districts may also consider using facilities where regular instruction is not provided, such as a high school arts facility or gymnasium, before offering traditional school buildings as emergency shelters.

Safety issues: Districts that operate shelters or allow their facilities to be used by third parties to operate shelters may set reasonable guidelines for facility use, including length of time, capacity restrictions, standards of conduct, and other safety-related rules. Districts should consider relevant staffing issues, including having enough police officers and other necessary employees to monitor shelters, especially transitional areas between the evacuees and students. Other safety considerations include:

- **Individuals with disabilities:** The State of Texas Functional Needs Support Services (FNSS) Integration Committee has created a [tool kit](#) to help shelter plans assist children and adults with or without disabilities who have access and functional needs maintain their health, safety, and independence in general population shelters.
- **Firearms:** Texas Penal Code section 46.02 regarding the unlawful carrying of a weapon does not apply to a person who is otherwise permitted to carry a handgun who carries a handgun while evacuating during a disaster or reentering a disaster area following the person's evacuation if not more than 168 hours have elapsed since the state of disaster or local state of disaster was declared, or more than 168 hours have elapsed since the time the declaration was made and the governor has extended the period during which a person may carry a handgun under this subsection. In addition, Section 46.02 and Section 46.03(a)(1) prohibiting carrying a firearm, location-restricted knife, or prohibited weapon on the premises of a school, and Section 46.03(a)(2) prohibiting the same on the premises of an active polling place (among other locations) do not apply to a person otherwise permitted to carry a handgun who carries a handgun on the premises, as defined by the statute providing the applicable offense, of a location operating as an emergency shelter during a state of disaster if the owner or operator of the premises authorized the carrying of the handgun and the person carrying the handgun complies with any rules and regulations of the owner, controller, or operator of the premises that govern the carrying of a handgun on the premises. Tex. Penal Code § 46.15(k), (l). In other words, as the owner or operator of the shelter, a district may make reasonable rules regarding carrying and storing handguns and sheltering individuals must comply.
- **Pets:** Districts are not required by law to accept animals at their facilities operating as emergency shelters, except for 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). Nevertheless, some agreements between districts and local emergency management personnel stipulate that districts will accept animals when operating as emergency shelters. Agreements should set out in advance what types of animals will be permitted. Districts will not be liable for any

claims arising from having 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 on [pet-friendly shelters](#).

- **Sex offenders:** Registered sex offenders may be among the evacuees arriving at a school district shelter. The district should determine the applicability of its policies and practices for allowing registered sex offenders on school campuses. See TASB Policy GKC(LEGAL) and (LOCAL).

XII. Food Service During Disasters

School food service has proven time and time again to be an essential and reliable source of nourishment for communities affected by disaster. During disaster situations, the state and federal departments of agriculture issue waivers that allow school meals to be provided to eligible populations under specific conditions. Sometimes eligibility is limited to students who qualify for free and reduced-price meals; at other times, meals may be distributed more broadly to qualifying families or even the general public. Rules for reimbursement and distribution vary based on the circumstances.

For more information, see:

- Texas Department of Agriculture squaremeals.org [Food Assistance for Disaster Relief](#)
- Texas Department of Agriculture squaremeals.org [Disaster Resources](#)
- [USDA Food Assistance for Disaster Relief](#)

XIII. Donations

School districts are often the beneficiaries or pass-through organizations for charitable donations during times of crises. TASB Legal Services' [Donations To and From Public Schools](#) offers information about permissible donations and accounting considerations.

XIV. Personnel Issues

For information about available leaves of absence, compensation, and other issues related to school district employees, see TASB Legal Services' [Personnel Issues During Epidemics and School Closings](#).

XV. Student Attendance and Admissions Issues

Minutes of instruction: School districts must operate for at least 75,600 minutes per school year. Tex. Educ. Code § 25.081(a). The commissioner of education, however, may approve a waiver of this requirement if disaster, flood, extreme weather conditions, fuel curtailment, or

another calamity causes schools to be closed. Tex. Educ. Code § 25.081(b). Waivers are also addressed in [TEA's Student Attendance Accounting Handbook](#). The first two days missed for any reason must be made up, using either designated makeup days or additional minutes. If a district misses additional instructional days beyond the two makeup days, the district can apply to TEA for a missed school day waiver. For details on applying for a waiver, see [TEA's State Waiver Types – Attendance](#).

Low attendance days: Districts or campuses can request a waiver to excuse any instructional days that have attendance at least 10 percentage points below the last school year's overall average attendance due to inclement weather, health, or safety-related issues. With proper documentation of the actual attendance, the previous year's attendance, and the reason for the low attendance, the days will be excused from average daily attendance (ADA) and foundation school program (FSP) funding calculations. For more information, see the [Student Attendance Accounting Handbook](#) and [TEA's State Waiver Types – Attendance](#).

Compulsory attendance: Absent an exemption, such as attendance at a private school or homeschool, Texas law requires students age 6–19 to attend school each day that instruction is provided. TEA recommends that evacuated students be given a reasonable period of time to decide whether they will return to their former school district or enroll in another district. TEA further advises that truancy charges should not be filed until that decision can be made.

Evacuees and homelessness: Students that fit into the statutory definition of homeless, discussed below, are eligible to immediately enroll in any school district, regardless of the residence of the student or the student's parent or guardian. Under 42 U.S.C. § 11432, the homeless student is also eligible to attend the school that the student attended when permanently housed, the school in which the student was last enrolled, or the school serving the attendance area where he or she is now located. A district may be required to provide transportation to a student who is homeless, depending on where the student is enrolled.

For students who are not homeless but whose home district is currently closed, TEA's weather and disaster information states that the students are eligible to enroll in another district. Once a district reopens, the students may reenroll. If the reopened school district has an adjusted calendar, the students are required to attend instruction on all of the days provided. Districts may be directed to use specific PEIMS crisis codes to report students who enroll under certain conditions.

Homeless definition: The legal definition of *homeless* can be found in TASB Policy FDC(LEGAL), which includes both 42 U.S.C. § 11302 (defining homeless person) and 42 U.S.C. § 11434a(2) (defining homeless children and youth). Students who are displaced by disaster are likely considered homeless if they lack a fixed, regular, or adequate nighttime residence. This definition includes students who are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations. The definition also includes students living in emergency or transitional shelters and those who use places not designed for sleeping as their regular nighttime residence.

Students may also be considered homeless if they are living with family or friends due to the natural disaster (a situation known as “doubling up”). In order to qualify as homeless, the students must be sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.

Districts can make reasonable inquiries to establish that a student is homeless. According to TEA’s weather and disaster information, identification showing that the parent is from the areas evacuated is reasonable evidence that a student is an evacuee eligible for services as a homeless student. A utility bill or similar documentation should not be required under these circumstances.

Providing services: Students who are homeless due to a disaster qualify for comparable services described in the McKinney-Vento Act, 42 U.S.C. § 11432(g)(4), including transportation services, educational services, and meals through school meals programs. These students may not be served separately from the general population. Districts cannot create separate “shelter schools” for students experiencing homelessness, except in limited, temporary circumstances.

Migrant definition: A student is not considered a migrant student unless the student was designated or falls under the definition of a migrant student independently of or prior to the circumstances that led to the displacement.

For more information, see:

- TEA’s [Dealing with Disasters: Frequently Asked Questions](#)
- [National Center for Homeless Education, Disaster Preparation and Response](#)

XVI. Liability Issues

Lawsuits for harms due to disaster-related activities: While nothing can prevent a person from filing a lawsuit claiming a school district caused or exacerbated harm that the person suffered as a result of a disaster or recovery efforts, the chances of such claims succeeding are low. Texas adheres to the doctrine of governmental immunity. This means that school districts cannot be held liable for the negligence of their employees, except in the limited instances expressly permitted by the state legislature. *Satterfield & Pontikes Const. v. Irving Indep. Sch. Dist.*, 197 S.W.3d 390 (Tex. 2006). If a person nevertheless threatens litigation against a district, the district should consult with its insurance carrier and local counsel. For more information, see TASB Legal Services’ [We’ve Been Sued! Now What?](#) and [The Board’s Role in Risk Management](#).

Governmental immunity: School districts continue to have governmental immunity while engaging in disaster recovery projects, operating emergency shelters, providing food service, and the like. Therefore, districts may not be held liable for most claims related to natural or man-made disasters. As always, however, the Texas Tort Claims Act (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. Consequently, districts may want to confirm with insurance providers that certain emergency uses of the school transportation fleet (like providing Internet hot spots or delivering meals) are covered by the district's insurance.

Requiring waivers from staff, students, or visitors: As discussed above, school districts are immune from claims that the district or its staff negligently failed to protect staff, students, or visitors from harm. Waivers may be helpful, however, in alerting the person signing to the risks associated with the activity and the fact that the school district has immunity from liability. Some districts may choose to have individuals sign an acknowledgement and assumption of risk for extracurricular activities or school events. While not legally necessary, the forms can help to communicate expectations and risk management strategies. On the other hand, requiring waivers for participation does not actually change the applicable law, increases the administrative burden on the district, and delays or denies some students participation if they fail to return the form. TASB Legal Services recommends that districts draft waivers in coordination with local counsel.

This document is continually updated at tasb.org/services/legal-services/tasb-school-law-source/business/documents/emergency-management-for-texas-public-schools.pdf. For more information on school law topics, visit TASB School Law eSource at schoollawsource.tasb.org.

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