



## **Districts of Innovation: Tips for Plan Drafting and Implementation**

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Since the commissioner's rules regarding Districts of Innovation have gone into effect, the Texas Education Agency has had an opportunity to review the various submissions of independent school districts seeking designation as Districts of Innovation. Specifically, TEA has seen districts' final plans and the related [Figure](#) adopted in the Texas Administrative Code, which districts use to report their exemptions to the Agency.

Similarly, TASB has had an opportunity to discuss innovation plans with numerous school districts, and as districts finalize their plans and begin work with TASB Policy Service, we are having occasion to review districts' plans and proposed policies.

Both TEA and TASB staff are concerned that plans may contain flaws or incongruities that make the plans hard to interpret and potentially may render the plans voidable. Remember that TEA does not have a role in approving districts' plans; nor does TASB. Nevertheless, both TEA and TASB wish to alert districts to the risk of proceeding with innovation plans that do not conform to the laws and rules governing Districts of Innovation. If a plan is not adopted in a manner that fits the laws and rules, at some point, an individual may file a grievance or a lawsuit to have the plan declared void. If a plan is void, aggrieved individuals may argue that a district operating under an invalid plan was violating the laws from which the district considered itself exempt.

To avoid these legal risks, TASB strongly encourages every district undertaking an innovation plan to work closely with the district's school attorney. The district's school attorney should review both the district's innovation plan and the Figure the district will be submitting to the Agency. TEA rules require the Figure as a means of collecting the data the Texas Legislature requires TEA to report about the number of exemptions included in districts' innovation plans around the state. A district's selections on the Figure do not trump the district's innovation plan; the innovation plan is the controlling legal document. If there is a discrepancy, however, the district may have failed to adequately report its exemptions to TEA.

### **What is required in an innovation plan?**

As a preliminary matter, the members of an innovation committee need to understand that the district's innovation plan is a legally binding document. Therefore, the plan should describe the intentions of the committee with specificity in order to avoid any confusion or ambiguity regarding the district's legal duties.

State law requires a district to develop a local innovation plan before the district can be designated a district of innovation. A local innovation plan must provide for a comprehensive educational program for the district, which may include innovations in the following areas:

- Innovative curriculum and instructional methods;
- Provisions regarding community participation, campus governance, and parental involvement;
- Modifications to the school year;
- Provisions regarding the district budget and sustainable program funding;
- Accountability and assessment measures that exceed the requirements of state and federal law;
- Any other innovations prescribed by the board of trustees.

By its nature, writing an innovation plan is a goal-setting process. A district's innovation plan must also identify the requirements imposed by the Texas Education Code that inhibit the goals of the plan and from which the district should be exempted upon completing the process to adopt a final plan. Tex. Educ. Code § 12A.003.

In addition, TEA requires districts to use the Figure described above as a method of reporting the specific exemptions in the innovation plan. The Figure is not an exhaustive list of all the statutes available for exemption; districts may list additional exemptions on the form. The district should take care, however, to consider the exemptions listed in the Figure and how they correspond with those discussed in the plan. If the exemptions in the plan and Figure are not an exact match, work with your school attorney to complete the Figure in the way that most clearly and accurately reflects the plan.

As a reminder, TEA does not approve innovation plans, and the Agency is under no obligation to alert you to problems in the content or the process used to adopt your plan. It is incumbent upon each district to work with legal counsel throughout the plan adoption process. Borrowing the language in another district's plan or following another district's adoption process is no substitute for the advice of a school attorney.

### **What process is required for plan adoption?**

The process is set out in detail in the TEA rules, TASB Legal Services' [Districts of Innovation FAQ](#), and TASB Policy AF(LEGAL).

Districts should be certain that procedural issues during plan development will not raise questions as to the legality of the innovation plan itself. For example, a district seeking innovation status should ensure early on that it has a duly formed district advisory committee. In addition, a district should painstakingly follow the steps in the statute and the TEA rules and comply with the Texas Open Meetings Act (OMA) at public meetings and public hearings.

Be as transparent as possible! Remember that the statutory procedure and the OMA set a floor, not a ceiling, for transparency and community engagement. Parent and teacher groups are raising questions and concerns about the content and validity of local plans. Many of these concerns are best addressed through open dialogue.

Be cautious about the term of your innovation plan, as well. Under state law and TEA's rules, the term of an innovation plan cannot be any longer than five calendar years. Under Texas Education Code section 12A.005, a district is designated a district of innovation and shall begin operations in accordance with the local innovation plan upon board adoption of the plan. In other words, the term of the plan begins with board adoption and notification to TEA, even if the district does not intend to implement the exemptions right away. If you express the time period as running from one date to another, be sure the time period is no longer than five years. For example, if the board adopted a plan on January 1, 2018, the latest possible end date is December 31, 2022. Note that the end date would fall halfway through a school year. The district may find it difficult to manage an abrupt end to an innovation plan midway through a school year. Districts may choose to renew or shorten plans to avoid a midyear transition.

### **What errors can occur in districts' plans?**

#### **The following problems may arise in a district innovation plan:**

- 1. Exemptions not listed by statute:** Initially, several plans failed to specify particular sections of the Texas Education Code as exemptions. Districts described concepts or listed TASB policy codes without clearly identifying the Texas Education Code sections from which they sought exemption.
- 2. Mismatch between plan and Figure or policy:** Some plan documents have had a conflict between concepts described in the district's plan and the statutory sections listed for exemption in the plan, TEA Figure, or proposed policies. For example, districts may make an error by:
  - Identifying narrow areas of exemption in the plan but selecting additional statutes in the accompanying Figure;
  - Describing a desire to be exempt from a statute or concept in the plan, but failing to identify the statute on the Figure; or
  - Adopting local policies claiming an exemption that was not clearly expressed in the district's innovation plan.

- 3. Failing to address all related laws:** Some plans fail to discuss all relevant sections of the Texas Education Code implicated by a concept. For example, many districts' plans include exemptions related to class size and student/teacher ratio, which are addressed in numerous statutes in Chapter 25 of the Texas Education Code. A district's innovation plan need not claim an exemption from every statute related to a legal topic; however, the plan should identify exempted statutes with specificity in order to avoid ambiguity. As a best practice, the plan should also discuss the district's intentions with regard to related statutes. For example, a district may choose to allow campuses more flexibility to decide on the appropriate number of students per class with an exemption from Texas Education Code section 25.112 but continue to hire sufficient teachers to maintain a class size ratio of 20 students to 1 teacher in accordance with Texas Education Code section 25.111. Ideally, the innovation plan will clarify the district's intent.
- 4. Listing the TAC, not the Texas Education Code:** A plan should not specify a desire to be exempt from provisions in the Texas Administrative Code without specifying an exemption from the underlying statute in the Texas Education Code. According to the TEA rules, if a district is exempt from a provision of the Texas Education Code, the district is also exempt from the related administrative rules. The reverse is not true, however.
- 5. Listing statutes not available for exemption:** Several draft plans have included exemptions from statutes that do not independently impose a requirement on school districts. For example, Texas Education Code section 21.044, which requires the State Board for Educator Certification (SBEC) to adopt rules establishing minimum certification requirements, is a duty of SBEC, not local districts, so it should not be an exemption. Another example is Section 21.055, which creates an optional local teaching permit. This section is a voluntary choice by the district, and therefore not available as an exemption. Other prohibited items include those excluded by law, like the paperwork reduction law in Chapter 11 and parts of Chapter 28. The district of innovation law and TEA's rules exclude these options.
- 6. Be careful what you wish for:** Among the most difficult issues to assess are the unintended consequences of exemptions. Some Education Code provisions actually help schools, so be cautious about exemptions that may harm the interests of the district. To make this analysis, be sure you have adequate legal consultation. For example, some requirements in the Education Code allow districts to be confident that they have also complied with other state and federal laws—laws from which the districts cannot become exempt in an innovation plan. A good example would be the purchasing requirements in Texas Education Code section 44.031. A district could choose to be exempt from this law in an innovation plan, but the district would need to work closely with counsel to be certain that local purchasing practices still comply with the Texas Government Code, Texas Local Government Code, and federal law.
- 7. Not thinking past the plan:** In addition to having a well thought-out plan, the district should also consider addressing related implementation issues in the plan. For example, in the case of class size, districts may set a local standard for notifying parents of students in an affected classroom or require notice to the school board of a large class.

- 8. Procedural mistakes:** We have observed some procedural errors in plan adoption. These would include making the procedural error of not posting the plan online for 30 days. Another error would be starting without a duly constituted district-level decision making committee (district advisory committee or DAC).

### **If we spot an error, can we amend our plan?**

TEA's rules provide that an innovation plan may be amended if the action is approved by a majority vote of the district advisory committee, or a comparable committee if the district is exempt from that section, and a two-thirds majority vote of the board of trustees. Amendment of a plan does not change the date of the district's designation as an innovation district, and the district need not review exemptions that were already formally approved in the plan. 19 Tex. Admin. Code § 102.1313.

### **How can TASB help?**

TASB Policy Service has developed sample policy language to reflect some of the most popular exemptions in innovation plans across the state (e.g., changes to the instructional calendar and teacher certification requirements). Whether your district is currently developing a plan or has completed the process, we encourage you to contact your district's policy consultant, or call TASB Legal Services, to discuss revisions that will match each district's specific innovation plan and needs.

See [Districts of Innovation: Policy Guidance for After the Plan](#) for more details about innovation plans and related local policies regarding the following exemptions:

- Teacher certification
- Class size and student/teacher ratio
- Instructional calendar
- Minimum attendance for credit (90% rule)
- Employee appraisal
- Campus behavior coordinator
- District and campus-level planning and decision making

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/Districts-of-Innovation/documents/doi-tips-for-plan-drafting-and-implementation.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/Districts-of-Innovation/documents/doi-tips-for-plan-drafting-and-implementation.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoolawesource.tasb.org](https://schoolawesource.tasb.org).

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

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