



Campaign Speech During Elections

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When election season is in full swing, it seems everyone has an opinion. Are there any limits on when and where members of the school community can speak out on election matters? The answer is *yes*. The following are frequently asked questions about the campaign speech rights of school districts, board members, candidates and other citizens, employees, and students.

The District

1. May a school district take an official position in an election?

No. School district employees and officials may not knowingly use public funds, directly or indirectly, for *political advertising* to advocate for or against a candidate or measure that will appear on a ballot. Tex. Elec. Code §§ 251.001(16), 255.003(a). In the school district context, this law most commonly prohibits the use of public funds to support particular candidates (including incumbents seeking reelection) and school district bond or tax elections.

Political advertising is a communication supporting or opposing a candidate or a measure that, in return for consideration, is published in a newspaper or other periodical or is broadcast by radio or television; or appears on a website or in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. Tex. Elec. Code § 251.001(16). Political advertising does not include an individual communication made by email but does include mass emails involving an expenditure of funds beyond the basic cost of hardware, messaging software, and bandwidth. 1 Tex. Admin. Code § 20.1(13)(B).

The Texas Ethics Commission, which is the state agency that oversees campaign issues, including political advertising, interprets the prohibition on using public funds for political advertising broadly. For instance, according to the commission, the conduct of a meeting on public property may involve an indirect use of public funds. Further, it is impermissible for employees to create or distribute political advertising during work time or for students to work on political advertising during school time. Board members and school employees who violate this prohibition could face fines or criminal penalties. See the Texas Ethics Commission's [Short Guide to the Prohibition against Using School District Resources for Political Advertising](#).

A school district officer or employee also commits an offense if the person uses public funds for a communication describing a measure if the communication contains information the person knows is false and that is significant enough to influence voters. Tex. Elec. Code § 255.003(b-1).

The Texas Education Code also prohibits the board from using “state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party.” Tex. Educ. Code § 11.169. While the Texas Education Code does not define *electioneer* or *other resources of the district*, and no court or other legal authority has interpreted the statute, the Election Code provides guidance on what the term *electioneer* may include: the posting, use, or distribution of political signs or literature. Tex. Elec. Code § 61.003(b).

2. May districts use public funds to communicate anything about an election?

Yes, public funds may be used to disseminate purely factual information. The prohibition in Section 255.003 does not apply to a communication that factually describes the purposes of a measure, if the communication does not advocate passage or defeat of the measure. Tex. Elec. Code § 255.003(b). For example, factual information includes explanatory materials about what is at stake in a bond or tax election, as well as information about the conduct of the election (date, polling places, etc.).

The Texas Ethics Commission warns that even communications with mostly factual information can violate Section 255.003 if they include persuasive slogans, like “Do the Right Thing for Our Kids.” For example, the commission concluded that a superintendent violated Section 255.003 by using district funds to pay for a brochure containing factual descriptions but also advocating a vote for the bonds. Tex. Ethics Comm’n Sworn Complaint Order No. SC-230205 (2003). The commission emphasizes that *any amount* of advocacy is impermissible. For examples of sentences or phrases that the Texas Ethics Commission has determined advocate passage or defeat of a measure, see [Advocating Passage or Defeat of a Measure](#).

According to the commission, “The critical question in determining whether the [advertising] constitutes ‘political advertising’ is whether the information supports or opposes a measure. Whether a particular communication supports or opposes a measure is a fact question. A factor in determining whether a particular communication supports or opposes a measure is whether the communication provides information and discussion of the measure without promoting the outcome of the measure.” Tex. Ethics Comm’n Op. No. 538 (2016) (citing Tex. Ethics Comm’n Op. No. 476 (2007)); *see also* Tex. Ethics Comm’n Sworn Complaint Order No. SC-31804181 (2018) (considering “support or oppose” as it applies to candidates and citing advisory opinions and examples).

3. May a district create a special logo for its bond election?

The answer to this question depends on the particular facts and circumstances in the district. A district may *not* create a logo containing any advocacy whatsoever; thus, slogans should be avoided. A district wanting to create a logo for its bond campaign or election to approve a tax rate must consult its attorney for guidance.

4. May a district use photos of school children in its bond materials?

Using photos of school children raises several concerns. If the children are depicted in deteriorating district facilities, this may be considered overly persuasive, and therefore advocacy, depending on how factual the depiction is and the context in which it is presented. Further, there may be privacy concerns related to the use of student photos based on the district's designation of directory information and a parent's release of the information. See TASB Policy FL. Finally, the use of stock photos of children who are not district students is problematic because those photos convey no factual information about the district. For these reasons, TASB Legal Services advises against the use of student photos in bond materials. A district wanting to do otherwise must consult its attorney for guidance.

5. May a district link from its website to other websites supporting its bond campaign?

No. The attorney general has opined that a court would likely find that the use of public funds to link to a website supporting a candidate or measure is a communication supporting or opposing a candidate or measure in violation of Texas Education Code section 11.169 and Texas Election Code section 255.003(a). Tex. Att'y Gen. Op. No. KP-0177 (2018).

6. How can a district be confident that its communications do not improperly advocate for passage of a measure?

Rely on written legal opinions. A school official or employee has an affirmative defense to prosecution for knowingly using funds to send a communication advocating passage of a measure if the official or employee reasonably relied on an interpretation of Section 255.003 in a written opinion from a court, the attorney general, or the Texas Ethics Commission. Tex. Elec. Code § 255.003(d).

In addition, on written request by a school district that has placed a measure on a ballot, the Texas Ethics Commission will prepare an advance written advisory opinion addressing whether proposed school district communications would comply with the law. Tex. Elec. Code § 255.003(e).

7. May the district hold a press conference to provide factual information about an election or a measure on the ballot?

Yes, and board members may attend. For the reasons discussed above, a school district press conference cannot be used for political advertising, but it can be used to disseminate factual information about an election or a measure on the ballot. Further, the Texas Open Meetings Act (OMA) specifically states that the attendance of a quorum of the board at a press conference related to school business is not a *meeting* governed by the OMA, so long as any discussion of school business is incidental to the event. Tex. Gov't Code § 551.001(4).

Board Members

1. May board members use personal time and money to campaign for candidates and causes?

Yes. Public officials, who are acting independently, without the use of public funds, have a free speech right to engage in political advocacy, including advocacy for their reelection. In its [Guide to the Prohibition Against Using School Resource for Political Advertising](#), the Texas Ethics Commission states, “Although you may not use political subdivision resources for political advertising, you are free to campaign for or against a proposition on your own time and with your own resources.” For example, a school board member may attend a community meeting, like a Rotary Club meeting, and advocate for passage of a bond measure or write a letter to the newspaper editor in support of a bond election or election to approve a tax rate.

When engaging in advocacy using personal time and resources, a trustee need not conceal the trustee’s position or claim to be acting as a private citizen. *See, e.g., Tex. Ethics Comm’n Op. No. 321 (1996) (determining that a sitting judge did not violate the law by sending campaign solicitations on letterhead that she purchased but that identified her position).*

2. May a school board member join a political action committee (PAC) to support a bond election?

Yes, but if several board members join the same PAC, don’t forget about the OMA. Board members are free to join special purpose political action committees, organized under Texas Election Code chapter 252. Board members may attend PAC rallies and related events; however, bear in mind that bond issues are public business over which the board has supervision or control, which means that OMA requirements may apply if a quorum is present. *Tex. Gov’t Code §§ 551.001(4)(A) (defining a meeting of a governmental body), .002 (requiring all meetings to take place in public), .041 (requiring all meetings to be posted).*

3. May a board member send an email from the board member’s personal computer to the private email accounts of friends and family, urging them to vote for a certain candidate in the presidential election?

Yes. As stated, a board member may speak, write, or distribute political advertising of any sort, as long as school funds are not used directly or indirectly. This applies to emails campaigning for or against particular measures, such as bond or tax elections, and particular candidates in national, state, and local elections.

4. May the board member send a similar email from a school computer?

Preferably not. Emails on a school computer are typically governed by the district's acceptable use policy. See TASB Policy CQ(LOCAL). Such policies often permit limited personal use of the district's computer equipment and Internet service, as long as the personal use does not incur an additional cost to the district. Nevertheless, it may be difficult to distinguish personal from official use of school equipment. Because so much is at stake when campaign speech is at issue, board members should avoid personal, election-related communications on school district equipment.

5. May a board member send an email from the board member's personal computer, urging members of the school community or school staff to support the board member for reelection or an upcoming bond election?

Maybe—but the board member should consider a few issues. As discussed above, personal emails campaigning for election or for or against a candidate or measure are permitted. Even emails that might eventually be sent to district email addresses arguably are not an impermissible use of district funds. In administrative rules, the Texas Ethics Commission has adopted a definition of *political advertising* that repeats the statutory definition with one important exception: “the term does not include an **individual** communication by e-mail.” 1 Tex. Admin. Code § 20.1(13)(B) (emphasis added).

A board member should use care before sending emails to all district staff. Emails can be printed and passed out, thereby becoming fliers; school district employee time spent writing or even reading email could be considered an indirect use of funds; and finally, the Texas Education Code's prohibition on electioneering may prevent board members from sending such communications. Tex. Educ. Code § 11.169 (prohibiting board members' use of district resources for electioneering).

If a board member wants to send personal email advocating for a particular outcome in an election, the board member might consider adding a short disclaimer stating that the email is personal, rather than official school district business, and was created using personally owned equipment and accounts.

6. During a reelection campaign, may a sitting board member use school resources to assist in his campaign?

No. Texas Election Code section 255.003 prohibits the use of public funds in a campaign for election or reelection to the school board. For example, the Texas Ethics Commission found that a school teacher and school secretary violated the law when they distributed a campaign flier for school board candidates that they created in the computer lab and

copied on the school's copier, even though they made and distributed the fliers before school and reimbursed the district for the costs. Tex. Ethics Comm'n Sworn Complaint Order No. SC-210101 (2001).

Under Section 255.003, any use of school district employee time, no matter how minimal, is prohibited, as is any use of school district facilities, including the mail system. *See, e.g.,* Tex. Ethics Comm'n Op. No. 443 (2002) (concluding that Section 255.003 would be violated by using a school employee to place a trustee's campaign fliers in the teachers' lounge). Moreover, Section 255.0031 specifically prohibits an officer or employee of a state agency or political subdivision from knowingly using or authorizing the use of an internal mail system for the distribution of political advertising. Tex. Elec. Code § 255.0031(a).

7. May a board member take an active role in another person's campaign for public office?

Legally yes, but there may be practical concerns if a board member publicly chooses sides in a school board race. As stated, a school board member acting independently, using solely personal time and resources, may participate in the political process like other citizens. That said, school boards often expect board members to refrain from actively campaigning on behalf of other board candidates.

In campaigns for offices unrelated to the school board, board members may be involved as individual citizens in ways that do not involve school district resources or create conflicts of interest with board service. For example, a school board member could support a candidate for city council. The board member could distribute campaign literature using personal time and money. The board member could send emails or post on social media using private accounts and contact lists. The board member could even serve as campaign manager or treasurer. The board member should exercise caution, however, not to leverage her position on the school board to the candidate's advantage. Finally, if the board member having a prominent role in a city council campaign could disadvantage the school board in some way, the board member may need to consider the ethical implications of the potential conflict of interest.

8. May a board member include in campaign materials a photo of the board member taken in a district location or facility that is not open to the public?

No. According to the Texas Ethics Commission, a public official, including a school board member, may not use a restricted location in a government facility to which the official has access by virtue of holding the office to create a photo, video, or other communication for political advertising. Tex. Ethics Comm'n Op. No. 550 (2019).

Candidates (including Incumbents) and Other Citizens

1. May a school district host an open forum opportunity for all school board candidates, like a “Meet the Candidates” event?

Arguably yes, but consider allowing another organization, like a parent/teacher association (PTA), to sponsor the event.

As we understand the relevant state and federal laws, a school district may use public funds to open a public forum where all candidates have an equal opportunity to appear at school events or distribute campaign literature. Under such circumstances, sitting trustees running for reelection may participate as well.

The Texas Ethics Commission, however, has opined informally that the use of school facilities to hold a candidate forum is an indirect use of public funds. To avoid this issue, the school district might consider allowing another organization, such as a PTA, to host a candidate forum. The forum could take place away from school property or, in our opinion, on school property pursuant to the district’s facilities use policy. See TASB Policy GKD(LOCAL).

The OMA specifically states that the attendance of a quorum of the board at a candidate forum is not a *meeting* governed by the OMA, so long as any discussion of school business is incidental to the event. Tex. Gov’t Code § 551.001(4).

2. May a candidate speak to the PTA or booster clubs?

Yes, at the invitation of the club. PTAs and booster clubs are typically organized as separate, private groups rather than a direct extension of the school district. To the extent these groups are independent of the school district, the Texas Election Code prohibition on the use of public funds and other laws, including the First Amendment, may not apply. The groups may, however, have other legal obligations related to their tax-exempt status, and these laws may prevent them from political advocacy during an election season. PTAs and booster clubs are permitted to invite candidates to a candidate forum or to visit the groups’ meetings one by one, but such invitations should be extended to all candidates.

3. May a candidate come to school or school events and visit with staff, students, or parents? If so, may the candidate hand out campaign materials?

Perhaps, depending on local policy and practice. A candidate or other citizen may come on school property and hand out campaign literature only to the extent local school district policy has created a limited public forum for such activity. Some school districts specifically prohibit campaigning on school property or at school events.

On school days or at school events: If school district policy designates a limited public forum for distribution of nonschool literature (including leafleting), the policy will typically allow each campus to establish times and locations for distribution. For example, campus rules may designate a specific table or bulletin board where nonschool literature may be displayed or left for students, parents, and staff to pick up voluntarily. Local policy may also provide that nonschool materials must be submitted for administrative review before distribution if they are likely to fall into the hands of children. Unless district policy specifically provides otherwise, campaign materials may be distributed or displayed on the same terms as all other nonschool materials. See TASB Policy GKDA(LOCAL).

At a nonschool-sponsored event held on campus: Although school district policies frequently require that nonschool materials (like campaign fliers) be submitted for administrative review prior to distribution to or near students, most local policies contain an exception for materials distributed during a meeting that is not school sponsored but is held on school property pursuant to a facilities use policy, like TASB Policy GKD(LOCAL). Again, unless district policy specifically provides otherwise, campaign materials may be distributed or displayed on the same terms as all other nonschool materials at after-hours, nonschool-sponsored meetings on school property. See TASB Policy GKDA(LOCAL).

In campus mailboxes: Special prohibitions apply to the use of school mail systems, like teachers' mailboxes. An officer or employee of a school district may not knowingly use or authorize the use of the district's internal mail system for the distribution of political advertising. *Internal mail system* means a system operated by a school district to deliver written documents to officers or employees of the district. This restriction does not apply to the use of an internal mail system to distribute political advertising that is delivered to the premises of a school district through the U.S. Postal Service. Tex. Elec. Code § 255.0031.

During voting: Under Texas law, school campuses may be used as election polling places. Tex. Elec. Code § 43.031. The Texas Election Code prohibits electioneering during the voting period within 100 feet of an outside door to the building in which a polling place is located. *Electioneering* includes the posting, use, or distribution of political signs or literature. Therefore, a candidate may come on campus or to the school building where voting is taking place to distribute political materials or post signs outside the 100 foot marker. While a district may not prohibit electioneering on the building's premises as long as the electioneering complies with the law, the district may enact reasonable regulations concerning the time, place, and manner of electioneering. Tex. Elec. Code §§ 61.003, 85.036. For more information on electioneering and other activities in the vicinity of a polling place, see the [Election Advisory](#) from the Texas Secretary of State.

4. May a current public official come to school or a school-related event to visit with school officials or community members if the official is running for reelection?

Yes, but the event should not become a campaign opportunity if the public official is given access that other candidates would not have. From time to time, elected officials may seek an opportunity to gather information about the school district or share information with members of the school community. Maintaining open communication with elected officials, such as state legislators, serves a public purpose and can be beneficial to school districts. For this reason, a school district may grant an elected official an opportunity to visit a campus, speak at a public event like a school board meeting, or meet directly with staff or parents.

When the elected official is also running for reelection, however, the school district should exercise caution that the event is not treated as a campaign event on behalf of the incumbent. The district should not promote the event or gather an audience for the event unless the gathering is a public forum to which all candidates are invited or the event is unrelated to the public official's political purposes.

Visits by public officials should be for substantive reasons, not mere photo opportunities. Photography, videography, and media coverage of such events should be in accord with school district policies regarding student privacy.

5. May a candidate post a campaign sign on a school campus or buy advertising in a school publication?

As discussed above regarding electioneering, campaign signs are allowed outside the 100-foot marker while a school is in use as a polling place and the location of the signs complies with state law and local policy.

Before election day: Although it is a matter of local policy and practice, most schools do not permit campaign signage to be placed on their campuses unless and until the campus is in use as a polling place. In light of the Texas Ethics Commission's concern that the use of school facilities for campaign speech could be an indirect use of public funds for political advertising, permitting signage at times and places other than polling places on election day may not be advisable.

Paid advertising: Many districts accept paid advertising to be placed on school signage and in a variety of school district media, including event programs, school publications, and online. In order to maintain editorial control over these various publications, TASB recommends that school boards adopt a local policy indicating that advertising is accepted to raise money for the school, not to open a public forum for communication. See TASB Policy GKB(LOCAL).

Because paid advertising at a school district is generally not a public forum, and in light of the Texas Ethics Commission's concern that use of school facilities (including signage and publications) could be an indirect use of public funds for political advertising, TASB Legal Services discourages districts from accepting paid political advertising.

6. May a candidate use the district logo in campaign materials?

Probably not. When asked whether a city officeholder could distribute political advertising on city letterhead containing a logo and slogan, the Texas Ethics Commission assumed that the letterhead was created by city staff to be used for official purposes; that the letterhead, logo, and slogan were paid for with city funds; and that the logo and slogan were the city's intellectual property, and as such, a city resource. Thus the officeholder could not use the letterhead, logo, and slogan for political advertising. Tex. Ethics Comm'n Op. No. 532 (2015). See TASB Policy CY(LOCAL) regarding use of the district's logo.

7. May a candidate include a photo of the candidate in front of a school district building or sign?

Yes. In concluding that a public official violates Texas Election Code section 255.003 by using restricted areas of government facilities in political advertising, the Texas Ethics Commission noted that the statute does not prohibit a public official, or by extension a candidate, from using government facilities that are equally accessible to the public for political advertising. Tex. Ethics Comm'n Op. No. 550 (2019).

8. May a parent wear a campaign t-shirt while attending a school district athletic event or picking up a child at school?

Of course! School districts and school employees are subject to restrictions on free speech in order to prevent the use of public funds for political advertising, but parents and community members are free to express themselves with campaign messages on their own clothing or bumper stickers on their cars. Unless a message is disruptive to the conduct of school activities or violates school rules for some other reason (because it is profane, for example), personal campaign messages displayed by parents and community members should not be restricted.

Employees

1. May school employees advocate for or against particular candidates or ballot measures (like a bond or tax election)?

Not on work time or using district resources, including office supplies and computer equipment. As discussed previously, school district employees may not use public funds, directly or indirectly, for political advertising to advocate for or against a candidate or

measure that will appear on a ballot. Tex. Elec. Code §§ 251.001(16), 255.003(a). The Texas Ethics Commission interprets the prohibition broadly to include any employee time and all school district resources like copy and fax machines, supplies, facilities, email, and computer equipment. See the [Texas Ethics Commission Guide](#). School employees who violate this prohibition could face fines or criminal penalties.

2. May school employees advocate for or against candidates or ballot measures on personal time with personal resources?

Yes. School employees retain their First Amendment right to campaign for or against a candidate or election measure in their non-work time, using their personal resources. The key is not to use school district resources—work time, money, facilities, equipment, supplies—for the political advertising.

3. Is the superintendent ever “off the clock” and free to advocate as a private citizen?

Because superintendents’ duties often include appearing as a district representative at after-school community gatherings, superintendents may have more difficulty than other district employees separating their official speech from their private speech. Advocacy by a superintendent on a school district election matter may appear to others to be an official statement by the district and thus a use of district funds. A superintendent should either speak only about the factual purposes of an election measure so as not to encourage, promote, or imply that listeners should vote for or against the measure, or limit expression of personal viewpoints to times and places that are clearly not associated with the superintendent’s job.

4. May a school employee send an email saying “Vote for Bob” from the employee’s personal computer to the employee’s coworkers at their school email addresses?

For the reasons explained above, personal emails campaigning for or against a measure or candidate are permitted. Even emails sent to district email addresses arguably are not an impermissible use of district funds. See 1 Tex. Admin. Code § 20.1(13)(B) (exempting email from the definition of political advertising). But be careful! Emails can be printed and passed out, thereby becoming fliers, and school district employee time spent writing or even reading email could be seen as an indirect use of funds. For employees’ own protection, employees should avoid political advocacy in favor of a particular candidate or measure in ways that will involve school equipment.

5. May an employee wear a button that says “Vote for the ISD Bond”?

Not during work hours if the district’s dress code does not permit it. Although school employees maintain their First Amendment rights at school, the school district, as a public employer, has the authority to regulate employee dress with reasonable, viewpoint-neutral

guidelines. Many school districts prohibit employees from wearing campaign t-shirts and buttons during work time. This regulation may be based on the Texas Election Code prohibition on using employee time to advocate for a candidate or measure. It may also be based on a concern that employees, who are viewed as representatives of the district while in their instructional and other roles, should not use their influence over students' political views. As with any dress code regulation, the guidance should be specific enough to give employees a clear understanding of what is expected, and the guidance should be provided to employees in advance, before any attempt is made to enforce the dress code.

In enforcing any limits on campaign items or expression, remember that not all of the time employees spend on district property is *work time*. Non-work time, like breaks or lunchtime, may offer employees the opportunity for free expression on any topic, including politics, among themselves (but not with students).

6. May a high school employee wear a “Vote for Bob” t-shirt to the high school football game?

Yes, unless the employee is there to work. Legally, the answer depends on whether the employee's attendance at the football game is considered work time for that employee. As a practical matter, however, even off-duty employees are likely to be viewed as representatives of the district while at a school-sponsored event. As a result, teachers and other employees should exercise good judgment regarding their attire.

7. May an employee park in the school parking lot with a bumper sticker that says “Vote for Bob”?

No legal authority has directly addressed this issue, but generally speaking, unless the expression an employee (or student) has chosen to affix to his or her personal vehicle as a bumper sticker or other sign is obscene or otherwise in violation of school rules, schools should probably avoid interfering with this form of personal expression.

8. May a school employee arrive early for work and place fliers for a candidate in the teachers' lounge or in teachers' mailboxes?

Political advertising may not be placed in an area of the school that is not part of the campus' limited public forum. Tex. Ethics Comm'n Op. No. 443 (2002) (distribution of candidate fliers in the teacher's lounge that was not a public forum violated the Texas Election Code). As a result, the teachers' lounge is probably off limits. As described above, however, under local policy and practice, there may be a part of the campus where public distribution of nonschool literature is permitted. See TASB Policy GKDA(LOCAL).

As discussed previously, special prohibitions apply to the use of school mail systems, like teachers' mailboxes. An officer or employee of a school district may not knowingly use or authorize the use of the district's internal mail system for the distribution of political advertising. Tex. Elec. Code § 255.0031.

Students

1. May a student wear a campaign t-shirt to school?

Like employees, students maintain their First Amendment rights while at school. Nevertheless, the school district has the authority to regulate student dress with reasonable, viewpoint-neutral guidelines. A few school districts prohibit t-shirts with slogans in their dress codes, but most allow them. If this is the case, t-shirts with political messages should be permitted on the same basis as t-shirts with other messages. As with any dress code regulation, the guidance should be specific enough to give students and parents a clear understanding of what is expected, and the guidance should be provided in advance, before any attempt is made to enforce the dress code.

2. May a student hand out fliers for a candidate to other students between classes?

Political advertising may not be placed in areas of a school that are not part of the campus' limited public forum. Tex. Ethics Comm'n Op. No. 443 (2002) (distribution of candidate fliers in the teacher's lounge that was not a public forum violated the Texas Election Code). As described above, however, under local policy and practice, students may have the opportunity to distribute nonschool literature, including campaign materials, to fellow students. See TASB Policy FNAA(LOCAL).

These do's and don'ts of campaign speech can be difficult to navigate. If you have questions about these issues, consult your school district's attorney or call TASB Legal Services at 800.580.5345.

This document is continually updated at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/campaign-speech-during-elections.aspx. For more information on school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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