



Texas Association of School Boards

Legal Services

P.O. Box 400 • Austin, Texas 78767-0400 • 512.467.3610 • 800.580.5345 • legal.tasb.org • legal@tasb.org

Serving Texas Schools Since 1949

Legal FAQ on Superintendent Evaluation

Published online in [TASB School Law eSource](#)

The superintendent leads the district. The board hires, manages, and evaluates the superintendent. Consequently, the superintendent's evaluation is one of the board's most important governance functions. This FAQ answers common questions related to the legal requirements and general recommended process for the superintendent's evaluation.

General Background

1. Who evaluates the superintendent?

The board of trustees employs and evaluates the superintendent, who is the educational leader and the chief executive officer of the school district. Tex. Educ. Code §§ 11.1513(a)(1), .201(a). The superintendent's evaluation is an exclusive duty of the board that may not be delegated. Tex. Educ. Code §§ 11.151(b), .1513(a)(1).

2. What governance responsibilities are met by the board's evaluation of the superintendent?

The superintendent's evaluation is a key part of fulfilling school board governance responsibilities.

District Accountability: The board's general duty to govern and oversee the management of the district, and the specific duty to adopt a vision statement and set comprehensive goals, requires that the board also monitor and hold the superintendent accountable as to district operations and progress on student performance results and specified district goals. Tex. Educ. Code §§ 11.051(a), .151(b), .1511(b)(2), (4). The board and the superintendent must work together to periodically evaluate board and superintendent leadership, governance, and teamwork. Tex. Educ. Code § 11.1512(b)(6). As a recommended best practice, a board may engage in an evaluation of its own performance in conjunction with the superintendent's evaluation.

Board/Superintendent Relationship: As the evaluator of the superintendent's performance, the board enhances the professional working relationship by clearly communicating what is expected and how the superintendent is doing. An established process that provides regular review and constructive feedback on the strengths and weaknesses of the superintendent's job performance helps to build trust and collaborative leadership. Tex. Educ. Code § 11.1512(b)(3), (6).

Superintendent Professional Development: As the superintendent’s employer, the board should encourage the superintendent’s professional growth consistent with the district’s goals. During the evaluation process, the board and superintendent can align the superintendent’s professional growth and skills development with the district’s performance goals. Tex. Educ. Code §§ 11.1511(b)(2), (4), .1512(b)(5).

Legal and Compensation Considerations: The superintendent’s annual evaluation fulfills statutory and contractual requirements and assists the board in making informed decisions about the superintendent’s contract and compensation. Tex. Educ. Code § 21.354(c). While the law only requires an annual evaluation, a superintendent’s evaluation is best viewed not as a once-a-year legal obligation but rather a yearlong process that is closely connected to district planning and assessment. The evaluation should be completed prior to consideration of a contract renewal or extension so that the assessment of performance may be incorporated into making the contractual decisions.¹

3. What are some of the unique challenges that board members face in evaluating the superintendent?

Evaluating the superintendent can be intimidating, especially when one considers certain inherent limitations in a board member’s role. As elected officials who are not employees of the district, board members do not have the advantage of day-to-day workplace observations, interactions, and feedback opportunities. In addition, since the board governs as a “body corporate,” all board members, each with different perspectives and opinions, must reach consensus on the superintendent’s evaluation. Tex. Educ. Code § 11.051(a). With these unique challenges, it is important that before each evaluation cycle, the board and superintendent discuss and reach consensus on the process and performance criteria that will be used for the superintendent’s evaluation for the upcoming year.

4. Which policies and documents related to the superintendent’s evaluation should board members review?

For a good summary of legal requirements and local policy choices, board members should review the following TASB Policies that pertain to the superintendent’s evaluation:

- BJCD Superintendent: Evaluation
- BJA Superintendent: Qualifications and Duties
- AIB Accountability: Performance Reporting

¹ Illinois Association of School Boards, [The Superintendent Evaluation Process - Strengthening the Board/Superintendent Relationship](#) at pp. 5-6 (2017) (discussing the importance of the evaluation process and providing detailed guidance).

TASB Policy BJCD(LEGAL) summarizes the evaluation process and performance criteria for a superintendent evaluation. TASB Model Policy BJA(LEGAL) lists the superintendent's legal duties and ongoing management responsibilities. For many districts, the duties listed in BJA(LEGAL) function as the equivalent of the superintendent's job description. TASB Policy AIB(LEGAL) reviews the requirement that a district publish an annual report describing the educational performance of the district and each of its campuses, which must be a primary consideration in the superintendent's evaluation. Tex. Educ. Code §§ 39.306, .307(3)(C).

Board members should also be familiar with the locally determined appraisal instrument adopted by the board for the superintendent's evaluation. Finally, a superintendent's contract may include agreed terms related to the evaluation, which should be reviewed.

Legal Requirements for the Superintendent's Evaluation

1. What are the district's options for conducting the superintendent evaluation?

Texas Education Code section 21.354 provides two options for the superintendent's annual appraisal. First, a district may use the commissioner's recommended appraisal process and performance criteria. Tex. Educ. Code § 21.354(c)(1). Because this option has been approved by the commissioner, it does not require any additional procedural steps.

Alternatively, a district may develop its own appraisal process and performance criteria. Tex. Educ. Code § 21.354(c)(2). A board must consult with its district and campus-level committees before adopting a locally developed evaluation. Before the rules were changed, many districts preferred this local option to the commissioner-recommended appraisal process, which had more requirements. However, many concerns about burdensome rules were eliminated after most of the commissioner's requirements were repealed.

2. What does the commissioner's recommended appraisal process and criteria require?

The commissioner's recommended appraisal process and criteria for a superintendent must include, at a minimum: (1) an annual evaluation, (2) a student performance domain, and (3) other additional procedures and criteria determined by the school district board of trustees. 19 Tex. Admin. Code § 150.1031. Former rules under the commissioner appraisal option included much more detailed requirements as to the process and criteria, but those rules as applicable to superintendents were repealed in 2016.² With the commissioner-recommended system reduced to an annual evaluation

² Effective July 1, 2016, the rules at 19 Texas Administrative Code chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter BB, Administrator Appraisal, Sections 150.1021 and 150.1022, were repealed and replaced with new rules at Sections 150.1021-.1028 to institute T-PESS, the state's recommended appraisal method for principals. The repealed rules had previously included a commissioner-

and a student performance domain, the current commissioner process provides significant flexibility for school boards to develop and approve their own additional appraisal procedures and criteria.

For the many school boards that had used the commissioner appraisal system under the repealed rules, they may continue to use that system, or a modification of that system at the board's discretion. To give all parties to the superintendent's appraisal fair notice, any changes to the appraisal procedures and criteria should be determined with adequate advance communication among the board members and superintendent.

3. What other information must be considered in the superintendent's evaluation?

Information in the board's annual report describing the educational performance of the district must be a primary consideration in the evaluation of the performance of the superintendent. Tex. Educ. Code § 39.307(3)(C). This requirement is in addition to the appraisal performance criteria under Texas Education Code section 21.354. The annual report must include:

- The district's Texas Academic Performance Report (TAPR), which includes a link to the district's PEIMS Financial Standard Reports for fund balance information;
- Campus performance objectives and progress towards those objectives;
- District accreditation status and each campus awarded a distinction designation or considered an unacceptable campus;
- The district's current special education compliance status;
- Information on violent or criminal incidents on each campus and the district's prevention and intervention policies;
- Findings that resulted from evaluations under the Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. § 7101 et seq.);
- Information on the performance of the previous year's graduates in their first year of college as reported by the Texas Higher Education Coordinating Board (THECB); and
- The progress of the district and each campus toward meeting goals in early childhood literacy and mathematics proficiency plans and college, career, and military readiness plans.

Tex. Educ. Code § 39.306; 19 Tex. Admin. Code § 61.1022.

recommended appraisal system for superintendents. Superintendent appraisal is now separately covered by its own rule at 19 Texas Administrative Code section 150.1031.

ESC Region 13 provides a [Superintendent Appraisal Worksheet](#) for analysis of student performance based on the district's accountability reports in the TAPR. This form may be completed by the superintendent and provided to the board prior to the final summative annual evaluation.

4. What is the permitted time frame to complete the superintendent's evaluation?

Texas Education Code section 21.354 requires that administrators, including a superintendent, be appraised annually. Section 21.354 does not define *annually*, but it does provide that school district funds may not be used to pay an administrator who has not been appraised in the preceding 15 months. Therefore, the recommended practice is for the school board to complete the annual evaluation within a one-year time frame. If for some reason, however, the board does not complete the annual evaluation within a one-year time frame, Section 21.354 provides flexibility to complete the annual evaluation in the 15-month period.

5. Does the district not pay the superintendent if the board fails to conduct an evaluation within the 15-month period?

Due to contractual and legal obligations, a district must pay its superintendent for agreed services rendered. If a board fails to appraise the superintendent within the 15-month period, TASB Legal Services interprets Section 21.354 to require an immediate appraisal to correct the deficiency so that school district funds may be used to pay the superintendent. For a district that is not in compliance with the appraisal time frame, TASB Legal Services recommends that the district consult with its attorney as to recommended corrective action so that the superintendent continues to be paid.

6. Does the annual evaluation have to occur in a specific month, like January?

While this may be surprising to many districts, the superintendent's annual evaluation does not have to occur in January, or any other specific month. There are, however, several reasons for conducting the superintendent's final summative evaluation in January or February.

The district's annual report on educational performance must be a primary consideration in the superintendent's evaluation. Tex. Educ. Code §§ 39.306, .307(c). The public hearing on a district's TAPR, which is a main component of the annual report, must be held within 90 days after the TAPR is received from TEA. Tex. Educ. Code § 39.306(c); 19 Tex. Admin. Code § 61.1022(c). TEA releases the annual [TAPR](#) in November or December, so school districts typically schedule the public hearing in January. Final evaluation of the superintendent logically correlates with the latest public report on the

district's educational performance. Therefore, most districts opt to schedule the superintendent's annual evaluation sometime shortly after the public hearing on the district's annual report.

In addition, if the evaluation leads to the conclusion that it may be best for the superintendent and district to part ways, an evaluation in the early part of the calendar year affords time for all parties to timely plan for separation in a manner that provides for a smoother transition between academic school years.

7. Does the superintendent's evaluation have to be considered for nonrenewal?

Yes, Chapter 21 of the Texas Education Code defines the superintendent as a "teacher"; therefore, the board must consider the superintendent's most recent evaluations before making a decision not to renew the superintendent's contract if the evaluations are relevant to the reason for the board's action. Tex. Educ. Code §§ 21.201(1), .203(a). The superintendent's evaluation is key documentation as to the assessment of employment performance. An evaluation record consisting entirely of high or acceptable ratings may weaken the district's legal position if a dispute arises between the district and the superintendent. Therefore, each year's evaluation needs to be a fair and true assessment of the superintendent's performance, including high, average, or low ratings as earned.

The Superintendent Evaluation Process

1. What TASB resources are available for the superintendent evaluation process?

The evaluation process requires year-round planning and diligent execution that goes beyond the minimum legal requirements. TASB's Board Development Services provides multiple resources on [Superintendent Evaluation](#) to assist districts.

The TASB Recommended Evaluation Instrument linked on Board Development Services' [Superintendent Evaluation](#) page consists of three parts designed to comply with legal requirements and provide the board flexibility in determining its local performance criteria:

- Part 1:** Addresses the legally required elements of student performance and other information from the district's annual report.
- Part 2:** Sets key performance indicators, with superintendent performance targets for the upcoming year that are selected to align with the district's goals.
- Part 3:** Identifies other management responsibilities related to the superintendent's duties, with specific priorities determined for the upcoming year.

[How to Do Superintendent Evaluations](#) outlines a three-step evaluation process to be implemented over the annual cycle:

- **First:** After completing the prior year's annual evaluation, the board starts a new cycle by assessing and making any changes to the superintendent's evaluation instrument, including updated goals with expected outcomes for the upcoming year.
- **Second:** During the year, the board holds one or more formative conferences with the superintendent, which function as interim checkups to touch base on expectations, discuss progress toward goals, and timely address any identified issues before the final summative evaluation.
- **Last:** At the end of evaluation cycle, the board conducts a closed session summative conference to discuss and reach consensus on the summative evaluation and then votes in open session to approve the evaluation.

[Setting Superintendent Performance Goals to Improve Student Achievement](#) explains how to set student performance goals and hold the superintendent accountable for student achievement through the superintendent's evaluation process.

2. How can the board collaboratively include the superintendent in the evaluation?

Throughout the year, formative conferences and other check-ins provide opportunities to report, monitor, and discuss the superintendent's progress. By the end of an evaluation year, however, it can still be a challenge for board members to remember and know all that the superintendent accomplished. For this reason, a board should ask the superintendent to provide a summative report that includes data and self-assessment as to the performance criteria in the evaluation instrument. The superintendent may present the report to the board at a meeting so that the board can ask clarifying questions and the superintendent can address any issues or concerns. Ideally, this report should be shared before the start of the summative conference process so that board members may consider the information prior to determining their individual, and then consensus, ratings.

3. May the board consider anonymous reports in the evaluation?

TASB Legal Services does not recommend the use of anonymous reports for the evaluation of the superintendent because the information is not subject to verification from the source. Anonymous reporting may lead to claims of an unfair process. The repealed commissioner rules for administrator evaluation, which formerly included superintendents, provided:

Each school district may implement a process for collecting staff input for evaluating administrators. If a school district implements a process for collecting staff input to evaluate administrators, the input must not be anonymous.³

While this rule has been repealed, a board may continue to apply the rule based on its own determination to use the standard as part of the board's agreed evaluation procedures. 19 Tex. Admin. Code § 150.1031.

Understandably, school boards may find it helpful to get information from staff and the community related to the superintendent's performance. Staff may be reluctant to be identified when providing input due to the superintendent's authority as chief executive officer. There is no perfect answer to this issue. As one approach, school boards may utilize professionally administered climate surveys to identify areas for improvement that may be incorporated into the superintendent's performance goals for the next annual evaluation cycle. Also, a board may conduct regularly scheduled roundtable discussions with staff and the community for general input regarding district successes and areas for improvement. Such information gathering can be transparently, collaboratively, and systematically incorporated into the annual evaluation process, which in turn will address concerns related to gathering useful and reliable input from verifiable sources.

4. What steps should the board take to prepare for the summative conference?

Before the summative conference, the board president should provide to each board member a blank form of the current year's evaluation instrument. Board members complete the instrument with their own individual ratings on each performance criteria and add any personal notes for their personal recollection as to the reasons for their ratings. Finally, board members bring their individually completed instruments to the board meeting for discussion during the summative conference.

5. Can the board evaluate the superintendent at a time other than formative and summative conferences?

Yes, the board may conduct evaluation check-ins with the superintendent throughout the year as determined appropriate by the board. The schedule of formative and summative conferences in the superintendent's evaluation cycle does not prohibit the board from engaging in other evaluation discussions with the superintendent at other times during the year. Of course, all such evaluation discussions between the board and superintendent must comply with the provisions of the Open Meetings Act (OMA) as discussed below.

³ Former rule 19 Tex. Admin. Code § 150.1022(d) (repealed effective July 1, 2016).

Open Meetings Act and Confidentiality Requirements

1. Can board members' individual evaluation ratings be provided to the board president before a meeting to accumulate the ratings?

To help expedite the summative conference, some boards may want board members to provide their individual ratings in the evaluation instrument to the board president prior to a board meeting so that the ratings can be accumulated in advance. As discussed below, whether such a pre-exchange is legally permissible raises a concern due to the possibility of criminal penalties under the OMA.

In 2019, the Texas Legislature revised Section 551.143 of the Texas Government Code to prohibit certain communications by a board member outside an authorized meeting. The new legal wording is long and challenging to understand. Broken down into smaller parts, Section 551.143 provides that:

A board member commits an offense if the board member:

- Knowingly engages in at least one communication among a series of communications;
- Each communication occurs outside of a board meeting;
- Each communication concerns an issue within the jurisdiction of the school board;
- Members engaging in the individual communications constitute fewer than a quorum of the board; and
- Members engaging in the series of communications constitute a quorum of the board;

And the board member:

- Knew at the time the member engaged in the communication that that the series of communications
 - Involved or would involve a quorum, and
 - Would constitute a deliberation once a quorum of members engaged in the series of communications.⁴

The board president's receipt of other members' evaluation ratings presents a difficult legal analysis as to the application of Section 551.143. The board president's collection of board members' ratings will have been facilitated by a known series of communications among all the board members outside of a meeting. Further, the OMA does not define or

⁴ *Deliberation* means a verbal or written exchange between a quorum of the board, or between a quorum of the board and another person, concerning an issue within the jurisdiction of the board. Tex. Gov't Code § 551.001(2).

limit the meaning of an *exchange*. Thus, it is unclear whether a court would consider the individual submission of each board member's ratings to the board president a deliberation in violation of the OMA. Without legal precedent on this recently revised law, we cannot say for certain whether the pre-exchange of ratings complies with Section 551.143. In addition, the risk for board members is significant because a violation of Section 551.143 is a misdemeanor offense. Tex. Gov't Code § 551.143(b).

Due to these complicated issues, school districts should consult with their school attorney if they opt to gather board members' evaluation instruments before the summative conference.

2. May the board members deliver their evaluation ratings to someone besides the board president to accumulate the ratings?

Instead of providing evaluation instruments to the board president, board members might confidentially deliver their individual evaluation ratings to a trusted employee or agent of the district, such as the district's attorney or superintendent's secretary. The selected individual would accumulate the ratings for the board, seal the combined rating results in an envelope, and deliver the envelope to the board president to be opened at the summative conference. Such a process will not violate the OMA since the information is not reviewed by a board member. The disadvantage, however, is that sensitive and confidential evaluative information about the superintendent's performance will be disclosed to someone who is not a board member and who must be trusted to keep the information confidential. Normally the disclosure of confidential information should be limited to closed session exchanges among the board members and individuals who are "necessary" to the conversation.⁵

3. How specific does the meeting notice have to be for the superintendent's evaluation?

Whether notice of a meeting is sufficient under the OMA depends on whether it reasonably informs the public of the subjects to be discussed or about which information will be received at the meeting. Matters involving the superintendent are not in the same category as ordinary personnel matters and need to be specifically identified on the board meeting notice.⁶ An acceptable meeting notice for the final evaluation would identify the subject as the "Superintendent Annual Evaluation."

⁵ Tex. Att'y Gen. Op. No. GA-0511 (2007) (concluding that a board violated the OMA by inviting select audience members to come individually into closed session to share their comments on the superintendent's performance).

⁶ *Cox Enters., Inc. v. Bd. of Trs. of Austin Indep. Sch. Dist.*, 706 S.W.2d 956 (Tex. 1986).

4. May the board conduct the superintendent’s summative conference in closed session?

Yes, the OMA provides that a governing body may deliberate the evaluation of personnel in a closed meeting, which includes the board’s evaluation of the superintendent. Tex. Gov’t Code § 551.074. Other board deliberations throughout the year involving the evaluation of the superintendent, such as formative conferences and monitoring check-ins, may also take place in a closed meeting.

There is an exception, however, if the superintendent requests a public hearing rather than a closed meeting on an evaluation. While such a request would be unusual, the OMA requires the board to comply with superintendent’s request and proceed in an open meeting. Tex. Gov’t Code § 551.074(b).

In addition, a document evaluating the superintendent is confidential, which would include the evaluation instrument that is discussed during the summative conference. Tex. Educ. Code § 21.355. Therefore, unless the superintendent provides written consent, the evaluation document should generally not be disclosed to the public.

5. Should the superintendent be present during the summative conference?

The attorney general has opined that a school board may include in a closed meeting individuals whose participation is necessary to the matter under consideration.⁷ On the other hand, the commissioner of education has concluded that if a superintendent’s presence is not necessary to the deliberation at hand, he or she should not attend the closed session.⁸

Based on these authorities, the board can determine whether the superintendent’s presence during the summative conference is appropriate. For example, the board could start by asking for the superintendent to provide a brief review of performance for the year, and then excuse the superintendent to deliberate with board members only. Board members may then work to reach consensus of each performance criteria without the superintendent. If questions arise or certain items lack consensus, the board might invite the superintendent back in for clarifications and additional input. The board might also conclude the summative conference by discussing the basis for the board’s collective ratings with the superintendent. Ultimately, the process used is the board’s decision. Hopefully, the working relationship between the board and superintendent will be strengthened through collaborative dialogue and constructive evaluation of the superintendent’s performance.

⁷ Tex. Att’y Gen. Op. No. JC-0375 (2001).

⁸ See *Walker v. North East Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 035-R10-1111 (Aug. 30, 2013) (finding that unless it can be shown that a superintendent’s presence is necessary in a closed board meeting where a grievance is being deliberated, the superintendent should not be in the closed meeting).

6. What confidentiality requirements apply to the superintendent's annual evaluation?

A document evaluating the performance of a teacher or administrator is confidential and is not subject to disclosure under the Texas Public Information Act (PIA). Tex. Educ. Code § 21.355; Tex. Gov't Code § 552.101. This confidentiality requirement includes the superintendent as an administrator.

The board must not disclose the superintendent's completed annual evaluation, or any other document that evaluates the superintendent's performance.⁹ Further, the board should not discuss the particular details of the annual evaluation, such as the board's rating of the superintendent on a performance measure. At the time of approval of the superintendent's annual evaluation, the public or media may inquire as to the superintendent's performance. To address such inquiries without violating confidentiality, the board and superintendent may mutually agree in advance on an acceptable public statement as to the superintendent's performance.

7. Does the confidentiality requirement extend to a blank appraisal form?

No, the confidentiality requirement does not extend to a blank appraisal form that will be used by the board to evaluate the superintendent. While the form is an instrument for evaluation, it is not a document that evaluates the superintendent's performance when content has not yet been entered.

8. Does the confidentiality requirement prohibit the board from discussing the superintendent's performance in an open meeting?

The confidentiality requirement covers evaluative documents but does not completely prohibit all discussion of the superintendent's performance in an open meeting. The board may generally discuss the superintendent's performance to the extent the discussion does not disclose the content of an evaluative document. For example, the board might discuss its overall impressions or level of satisfaction with the superintendent's development and execution of a program designed to meet a district goal.

9. Does the board make a final decision on the annual evaluation during the closed meeting?

No. A final action, decision or vote on a matter deliberated in a closed meeting under the OMA may only be made in an open meeting that complies with the OMA notice provisions. Tex. Gov't Code § 551.102. While the board will complete the superintendent's evaluation instrument in closed session and maintain its

⁹ See *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.) (holding that a principal's memorandum was evaluative because it reflected principal's judgment regarding a teacher's actions, gave corrective direction, and provided for further review).

confidentiality, the approval of the superintendent's annual evaluation by board vote must occur in an open meeting. This approval also serves as an official record in the meeting minutes that the board has complied with the law that requires annual evaluation of the superintendent. Tex. Educ. Code § 21.354; Tex. Gov't Code § 551.021.

10. Does the board have to give the superintendent a raise or a new contract after the evaluation?

No. After conducting the annual summative evaluation, the law does not require that the board also act on a raise or a contract extension. It is common, however, for school boards to consider a contract extension and increase in compensation following the superintendent's final evaluation for the year. To give adequate time for full review and discussion, TASB Legal Services generally recommends that the board address the superintendent's evaluation and contract issues at separate board meetings.

In negotiating and finalizing a new or extended contract, a common question arises as to when any change in salary becomes effective. Some districts negotiate the superintendent's contract many months before the start of the next fiscal year. In general, a board approves the superintendent's compensation as part of the district's annual budget cycle. Therefore, increases in salary will be better timed to become effective on a date that aligns with the start of the district's fiscal year. The board should consult with the district's attorney whenever entering into or amending the superintendent's contract and should seek specific legal advice as to any extended service period, change in salary, and the effective date for any such changes to an existing contract. For additional information on superintendent contracts, board members may review TASB Legal Services' [Guide to Superintendent Contracts](#).

Conclusion

As school board members know from experience, the superintendent's evaluation requires much more than a single meeting to comply with the legal requirement for an annual evaluation. A school board that develops and implements the superintendent's evaluation process and performance criteria with forethought, collaboration, and year-round commitment will place its district in a much stronger position to accomplish the district's mission and goals for educational success.

This document is continually updated at tasb.org/services/legal-services/tasb-school-law-essource/governance/documents/legal-faq-on-superintendent-evaluation.pdf. For more information on school law topics, visit TASB School Law eSource at schoollawesource.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. Updated March 2021.