

**BOARD OPERATING  
POLICIES AND PROCEDURES**

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**DRAFT**

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## **I. PREAMBLE**

### **A. Purpose**

The Texas Higher Education Coordinating Board (the Board or Agency) adopts and implements the Board Operating Policies and Procedures to achieve the following purposes:

1. To outline the Board's general powers and duties under Chapter 61, Subchapter B, of the Texas Education Code, and other applicable laws;
2. To outline procedural rules governing the Board pursuant to Chapter 61 of the Texas Education Code, and other applicable laws;
3. To apprise Board members of the standards of conduct and conflict of interest provisions applicable to their conduct pursuant to chapter 572 of the Texas Government Code; and
4. To adopt protocols that define how Board members communicate with the media, elected officials, institutional representatives, and students.

### **B. Goals**

In exercising its powers and fulfilling its duties, the Board shall strive to:

1. Establish major visionary guiding policies affecting the state's higher education system;
2. Establish the goals that define the results that the Board seeks to achieve;
3. Serve as a link between the Agency and state policy makers;
4. Be accountable for its decisions and actions;
5. Maintain objectivity and a statewide perspective in considering matters that may come or are before it for decision;
6. Act in the best interests of students and the people of Texas;
7. Continually learn and work to enhance the Texas higher education system within the boundaries of statutory authority; and
8. Review the Board Operating Policies and Procedures each biennium.

### **C. Scope**

These Board Operating Policies and Procedures apply to all activities conducted by the Board.

#### D. Responsibility for Implementation

The Board and its officers are responsible for ensuring the implementation and adherence to the Board Operating Policies and Procedures.

#### E. Nondiscrimination Policy

To the extent provided by applicable law, no person shall be excluded from participation in, denied the benefits of, or be subject to discrimination under, any program or activity sponsored or conducted by the Board, on the basis of race, color, national origin, religion, sex, age, veteran status, genetic information, or disability.

## II. THE BOARD

#### A. Purpose

The Board represents the highest authority in the state in matters of public higher education and is charged with the duty to take an active part in promoting quality education throughout the state. The Board performs its duty by:

1. Representing the State of Texas in the coordination of all higher education in the state;
2. Setting policies that formulate the course for higher education in Texas;
3. Maintaining an objective, statewide perspective;
4. Ensuring the efficient and effective use of higher education resources and eliminating unnecessary duplication;
5. Making recommendations to improve the efficiency and effectiveness of transitions, including between high school and postsecondary education, between institutions of higher education for transfer purposes, and between postsecondary education and the workforce;
6. Administering programs and trusteed funds for financial aid and other grants as necessary to achieve the state's long-range goals and as directed by the legislature;
7. Determining educational questions according to educational measures;
8. Collecting and making accessible data on higher education in the state and analyzing that data to support policy recommendations;
9. Setting policies for institutional and program excellence by balancing access and quality;
10. Discouraging the initiation and continuation of programs of substandard quality;
11. Recognizing community and technical colleges as full partners in higher education; and
12. Being spokespersons for higher education in Texas – to encourage Texas institutions, to monitor and praise their progress, to support their steps towards excellence, and to applaud their imagination and initiative in imparting knowledge.

#### B. Board Composition

1. The Board is composed of 9 members and one non-voting student representative appointed by the governor to provide representation from all areas of the state with the advice and consent of the senate, and as the constitution provides.
2. A Board member may not be employed professionally for remuneration in the field of education during the member's term of office.

3. Members of the Board shall serve without pay but shall be reimbursed for their actual expenses incurred in attending meetings of the Board or in attending to other work of the Board when that other work is approved by the Board Chair.

#### C. Restrictions on Board Appointment, Membership and Employment

1. A Board member must be a representative of the general public. A person is not eligible for appointment as a member of the Board if the person or the person's spouse:
  - a. is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;
  - b. owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or
  - c. uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.
2. A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:
  - a. the person is an officer, employee, or paid consultant of a Texas trade association (i.e. a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest) in the field of higher education; or
  - b. the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of higher education.
3. A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

#### D. Terms

1. Board members hold office for staggered terms of six years with terms of one-third of the members expiring on August 31 of each odd-numbered year.
2. In the event of a vacancy during a term of a member appointed by the governor due to resignation or other reason, the Governor shall appoint a replacement who meets the qualifications of the vacated office to fill the unexpired portion of the term.

## E. Removal of Board Member

1. It is a ground for removal from the Board that a member:
  - a. does not have at the time of taking office the qualifications required by Section TEC, 61.0222(a);
  - b. does not maintain during service on the board the qualifications required by TEC, Section 61.0222(a);
  - c. is ineligible for membership under TEC, Section 61.022 or 61.0222;
  - d. cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
  - e. is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.
2. The validity of an action of the Board is not affected by the fact that it is taken when a ground for removal of a board member exists.
3. If the commissioner of higher education has knowledge that a potential ground for removal exists, the commissioner shall notify the Board Chair of the potential ground. The Board Chair shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the Board Chair, the commissioner shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

## F. New Board Member Orientation

A new appointee to the Board shall be given an orientation to the activities and functions of the Board prior to being able to fully participate in a Board meeting. The New Board Member Orientation shall include the following topics:

- a. Agency mission, goals, objectives, and strategic plan;
- b. Agency organization, function, and powers and duties;
- c. Board member responsibilities, including the proper role of the member in policy making, deliberations, communications, and relations with the administrative staff of the Agency;
- d. Standards of conduct as public officials, including conflict-of-interest laws;
- e. Board meetings and other Board functions;
- f. Legislation that created the Board;
- g. Rules of the Board;
- h. Current budget of the agency;
- i. Results of the most recent formal audit of the agency;
- j. Texas open government laws, including information regarding mandatory training in open meetings and public information as required by the chapters 551 and 552 of the Texas Government Code;
- k. Travel reimbursement/per diem procedures and state regulations; and
- l. Other topics deemed appropriate by the Board Chair.

### **III. OFFICERS OF THE BOARD**

The Governor shall designate a Board Chair and Vice Chair. The Board shall appoint a Secretary of the Board whose duties may be prescribed by law and by the Board.

### **IV. BOARD MEMBER CODE OF CONDUCT/CONFLICT OF INTEREST AND ETHICAL CONDUCT**

A. Code of Conduct/Conflict of Interest. Board members shall adhere to the standards of conduct and conflict of interest provisions set out in section 572.051 of the Texas Government Code and other applicable laws. Pursuant to that section, a Board member must adhere to the following:

1. Not accept or solicit any gift, favor, or service that might reasonably tend to influence the Board member in the discharge of official duties or that the Board member knows or should know is being offered with the intent to influence the Board member's official conduct. Note: Accepting tickets, vouchers, or other forms of entry that typically have a cost of admission, to an event hosted by an institution of higher education (e.g., football tickets) is allowed under state ethics laws so long as a representative of the donor institution is present.

Please note that the appearance of accepting such tickets has been questioned in certain news media articles as potentially creating a conflict of interest for Board Members, and potentially influencing them to vote in favor of matters that may come before the Board from such institutions. To avoid any such appearance, it is recommended that Board Members planning to attend such an event should request an invoice for, and in turn pay, the base value of the tickets or other form of entry for that event.

2. Not accept employment or engage in a business or professional activity that the Board member might reasonably expect would require or induce the Board member to disclose confidential information acquired by reason of the official position;
3. Not accept employment or compensation that could reasonably be expected to impair the Board member's independence of judgment in the performance of the Board member's official duties;
4. Not accept an honorarium for services requested to be provided due to the Board member's official position or duties. This prohibition extends to an honorarium for in-state and out-of-state engagements if the Board member would not have been asked but for his/her official position. The honorarium may not be remitted to a third-party or tax-exempt charity if payment is made in consideration of the services performed and at the direction of the Board member. The Board member may accept food, transportation, and lodging when in connection with a conference or a similar event if within reason and, as required, reported in Section XI of her/his annual personal financial statement (Texas Penal Code, Section 36.07).

5. Not make personal investments that could reasonably be expected to create a substantial conflict between the Board member's private interest and the public interest;
  6. Not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the Board member's official powers or performed the official duties in favor of another;
  7. Complete and file a personal financial statement with the Ethics Commission on or before April 30 each year if they served at any time beginning on January 1 and continuing through April 30 of that year (Texas Government Code § 572.026(a)). Newly appointed individuals must file a statement within 30 days of taking office.
  8. Complete the open government training as required by Government Code sections 551.005 and 552.012;
  9. Comply with the Open Meetings Act when communicating with other Board members outside of a posted meeting of the Board; and
  10. Seek counsel when confronted with a situation that the Board member believes may present a conflict of interest.
- B. Appropriated Funds and Official Authority. All Board members must adhere to Texas Government Code §556 in using appropriated money, but may engage in political activity to the widest extent consistent with the restrictions imposed by law.
1. The Board may not use any appropriated money under its control to finance or otherwise support the candidacy of a person for office. This prohibition extends to direct or indirect employment of a person to perform such actions.
  2. The Board may not use appropriated money to employ a person who is required by Chapter 305 to register as a lobbyist.
  3. Board members may not use their official authority for the purpose of affecting the result of an election, under the Code of Federal Regulations, Title 5, Part 151.121.
- C. Principles of Ethical Conduct. Board members shall conduct themselves in a manner that strengthens the public's trust and confidence by adhering to the following principles:
1. Honesty, accountability, transparency, respect and trust;
  2. Integrity of the highest caliber;
  3. Conduct that is indisputable and beyond reproach;
  4. Openness and fairness; and
  5. Commitment to compliance with the law, rules and regulations, and Board Operating Policies and Procedures.

Board members:

- a) shall be honest and ethical in their conduct and the performance of their duties;
- b) shall adhere to all applicable state and federal laws and regulations, policies and regulations, and member rules and procedures;



- c) shall protect and conserve state resources and shall not use them for unauthorized activities;
- d) shall endeavor to avoid any actions that would create the appearance that they are violating the law, rules and regulations, or Board Operating Policies and Procedures;
- e) shall not hold financial interests that are in conflict with the conscientious performance of their official duties and responsibilities;
- f) shall not engage in any financial transaction in order to further any private interest using nonpublic information which they obtain in the course of their Board service;
- g) shall not make unauthorized commitments or promises of any kind purporting to bind the Board;
- h) shall not use their public offices for private gain;
- i) shall act impartially with a statewide perspective and not give preferential treatment to any private or public institution of higher education, organization or individual;
- j) shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official duties and responsibilities;
- k) shall promptly disclose fraud, waste, abuse and corruption to the Director of Audit and Compliance; and
- l) shall strictly adhere to all state and federal laws and regulations, policies and regulations, and member rules and procedures regarding sexual harassment and equal opportunity for all persons regardless of race, color, religion, sex, national origin, age, disability, genetic information or veteran status.

#### D. General Duties and Responsibilities of Board Members

1. The Board is responsible for the hiring, evaluation and, if deemed necessary and appropriate, the termination of employment, of the Commissioner.
2. Duty of Loyalty - A Board member must be responsible and loyal to the interests of the state higher education system as a whole. A member does not represent any other constituency, person, or entity that conflicts with those interests.
3. Duties of the Board Chair - The Board Chair may speak for and represent the Board under a general grant of authority but may not take positions he or she knows to be contrary to Board policy.
4. Duty of Unity – Except as indicated in D.3., Duties of the Board Chair, no single member of the Board may speak for or otherwise bind the Board, unless authorized to do so by vote

of a majority of the Board pursuant to an action taken in open, public session at a duly-constituted meeting of the Board.

5. Committee Authority - Board committees represent the Board and act on its behalf in preparation for Board meetings. They have authority to report and recommend various actions, including policy initiatives, to the Board.
6. It is the responsibility of each Board member to have a basic knowledge of the operations, management, finances, and effectiveness of the Agency, and each Board member has the right and authority to inform himself/herself as to the duties, responsibilities, and obligations of the member in such a manner as each may deem proper. Members of the Board are to be provided access to such information as in their individual judgments will enable them to fulfill their duties and responsibilities as members of the Board.
7. A Board member may not publicly disclose information that is confidential by law, unless disclosure is required by law or made pursuant to a vote of the Board to waive an applicable privilege.
8. Members of the Board shall bring concerns about operations, accountability, compliance, or the need for an investigation to the Commissioner, Board Chair, Vice Chair, General Counsel, Director of Audit and Compliance, or appropriate Committee of the Board.
9. Members of the Board shall respect the role of the Commissioner as the chief executive officer of the Agency and shall respect management and reporting lines for the agency.
10. Communication with Agency Staff. Members of the Board are to be provided access to agency personnel as in their individual judgments will enable them to fulfill their duties and responsibilities as Board members. The preferred regular channel of communication from Board members to agency personnel shall be made through the Commissioner and/or senior executive staff (i.e., Deputy Commissioners and General Counsel; also see IX. Board Communication with the Media, Elected Officials, Institutional Representatives, and Students). The Commissioner or senior executive staff member will alert the Board Chair and Vice Chair of any substantive communication with Board members that may directly impact the work of the Board.
11. The Board is responsible for the annual performance appraisal and compensation of the Commissioner of Higher Education, the General Counsel, and the Director of Internal Audit and Compliance. The Commissioner's annual compensation may not exceed the amount authorized in the General Appropriations Act and must be done in writing, approved by the Board in a public meeting, signed by the chair, and submitted to the Governor, the Legislative Budget Board and the Comptroller.

The Board Secretary shall work with the Director of Human Resources (HR) to develop the annual performance appraisal forms and disseminate them to Board members no later than ~~September-June~~ June 1 of each year. Each Board member shall complete the forms and return them to the HR Director by ~~October-July~~ July 1. The HR Director will combine and average the scores for each evaluation and include any comments without attributing the comments to a particular Board member. The HR Director shall send the final evaluations to the Board

within 14 calendar days before the ~~October Agency Operations Committee meeting~~July Board meeting. Board members shall meet in Executive Session during the ~~Agency Operations Committee~~Board meeting to discuss the performance evaluation of the Commissioner, the General Counsel, and the Director of Internal Audit and Compliance.

## **V. MEETINGS OF THE BOARD**

- A. Regular Meetings. Regular meetings of the Board shall be held in the city of Austin at least once per quarter of the calendar year on dates determined by the Board.
- B. Emergency Meetings. An Emergency Meeting of the Board may be called by the Board Chair. Notice of such meeting shall be communicated in the manner most likely to give the greatest amount of notice to the members. Every meeting notice to Board members shall contain the meeting time, place, day, and general nature of the business to be transacted.
- C. Special meetings of the Board. Special meetings of the Board may be held at times and places as ordered by the Board during a regular meeting, or special meetings may be called by the Board Chair to be held at a time and place the Chair shall designate.
- D. Notice. The Board Chair shall designate a location for each Board meeting. Notice of the meetings, including the location shall be posted pursuant to the requirements of the Texas Open Meetings Act. All meetings shall be open to the public, except executive sessions as discussed below. Notice to the public of all meetings shall be given pursuant to the Open Meetings Act.
- E. Duties of Board Members at Board Meetings:
  - 1. Right to Speak - A Board member has the right to state his or her views, opinions, positions, and recommendations but should do so professionally and respectfully in the procedural manner established or directed by the Board Chair, who shall allow and facilitate expression of dissenting or minority viewpoints.
  - 2. Duty to Listen - A Board member should listen respectfully to the views, opinions, positions, and recommendations of others, even those with whom he or she disagrees.
  - 3. Duty to Respect Board Decisions - A Board member should abide by and not subvert or otherwise derogate to outside parties lawfully-taken Board decisions. If, as a matter of principle, a Board member must articulate a minority opinion, he or she may do so; however, such opinion should be announced to the Board through the Board Chair, who may call upon the dissenting Board member to articulate his or her opinion.
  - 4. Duty of Confidentiality - A Board member should not report the Board's executive session discussions, deliberations, or statements of Board members (including his or hers) to any third party without the Board's permission unless required by law to do so. Robert's Rules of Order (11th ed., 2011.)
  - 5. Duty of Attendance - Board members should make every attempt to attend Board meetings. However, if a Board member is unable to attend a Board meeting, he or she

shall notify the Board Chair as soon as practicable. In accordance with state statute (Texas Education Code Section 61.0223(a)(5)) and Section II.E.1.e of the Board's Operating Policies and Procedures, if a Board member is absent from more than half of the regularly scheduled Board meetings during a calendar year without an excuse approved by a majority vote of the Board, the Board member is subject to removal from the Board.

6. Duty of Disclosure - If a Board member has a real or potential private or personal interest in a measure, proposal, or decision pending before the Board, she/he should disclose this information to the remainder of the Board in open meeting and refrain from voting or otherwise participating concerning that matter (Texas Government Code §572.058). An individual who violates this duty is subject to removal from office on the petition of the Attorney General on the Attorney General's own initiative or on the relation of a resident or of any other member of the Board. For purposes of section 572.058, an individual does not have a "personal or private interest" in a measure, proposal, or decision if the individual is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation.
- F. Agendas. The Board Chair and Vice Chair shall determine the agenda for a Board meeting. Board members have a right and a duty to raise matters of concern related to Board oversight. In order that such matters can be discussed properly, it is important that a Board member with a concern mention it to the Board Chair and Vice Chair in time for the matter to be added to the agenda, if needed. The Board Chair makes the final determination as to whether to place an item on the agenda unless a majority of the Board members present request to add an item or otherwise amend the agenda. If an item is removed from the agenda, the Board Chair will timely inform other Board members of the reason for removing an agenda item after it has been posted. Board members shall receive the agenda and supporting materials for an upcoming meeting at least two weeks before the meeting, to the extent possible. Each matter to be considered at a meeting of the Board or a committee of the Board as an Agenda Item shall be accompanied by a summary of the facts pertaining thereto, the need for action thereon, and the recommendations of the Commissioner, staff, or advisory committee, where appropriate.
  - G. Consent Agendas. A compilation of matters required to be approved by or reported to the Board via a Consent Agenda format shall be prepared as directed and approved by the Commissioner, Deputy Commissioners, and Assistant Commissioners, as appropriate. Any Board member may request that an item be added or removed from the Consent Calendar at the time it is being considered. Addition of an item from the Agenda to the Consent Agenda requires approval of a majority of Board members present. Removal of an item can be accomplished at the request of a single Board member.
  - H. Quorum/Action. At each regular or emergency meeting, the Board Chair shall certify a quorum is present in order to conduct official business of the Board. A quorum of the Board is a majority of the number of members fixed by statute, not including the Board's student representative. Accordingly, five members is a quorum of the Board for all purposes. The Texas Open Meetings Act prohibits less than a quorum of members from discussing or deliberating official business of the Board at such a meeting. A majority of members present, whether or not they comprise a quorum, may adjourn the meeting from time to time. A majority shall mean, for all purposes, more than half of the votes cast, ignoring abstentions.

- I. Rules Governing Board Action. The Board Operating Policies and Procedures shall govern the action of the Board. In the event that the policies and procedures do not specify how an action shall be conducted, the Board, as appropriate, shall refer to pertinent statutes, rules, or the latest Robert's Rules of Order Newly Revised Edition.
- J. Recordation of Meetings. All or any part of the public meeting may be recorded by any person in attendance by means of tape recorder, video camera, or any other means of sonic or visual reproduction unless determined by the Board Chair to be disruptive of the meeting.
- K. Public Testimony. Opportunity for public testimony shall be provided at each regularly scheduled meeting of the Board and its standing committees.
1. The Board or Committee Chair shall take appropriate action to avoid unnecessary, repetitive testimony and to assure that different members of the public with differing points of view have reasonable access to the Board or committee. The Board or Committee Chair shall strive to ensure that representatives from both sides of an issue are able to address the Board or committee.
  2. Oral and written testimony shall be limited to an existing agenda, including consent, item that is being considered by the Board.
  3. Individuals wishing to testify must register via mail, email, fax or online using the public comment form available on the agency's website at least 24 hours prior to the meeting. Exceptions may be made at the discretion of the Board or Committee Chair.
  4. Individuals must provide his or her name, organizational affiliation, if any, and indicate which agenda item shall be addressed. A separate form must be submitted for each agenda item on which the speaker will testify. Additionally, the registrant shall disclose his or her viewpoint on the agenda item. The date and time the registration was received shall be noted.
  5. Each speaker shall have three minutes, unless otherwise stated in advance by the Board or Committee Chair. Testimony is limited to one representative per organization.
  6. Special accommodations for individuals who may require auxiliary aids or other services shall be made by the Agency's ADA Coordinator. Individuals requiring these accommodations shall notify the ADA Coordinator at least five days prior to the meeting.
  7. A registrant offering written materials in lieu of oral testimony shall provide at least 10 copies of the materials to Agency staff for distribution to Board members.
- L. Executive Sessions. Executive Sessions of the Board are closed meetings of the Board which may be held as authorized by the Open Meetings Act.

## VI. BOARD COMMITTEES

- A. The Board Chair may establish regular, standing, or temporary committees of the Board as he/she deems appropriate.
- B. To the extent practicable, all subjects and matters requiring Board action shall be referred to the appropriate standing committee for consideration and recommendation before action is taken by the Board. If the matter could be considered by more than one committee, the Board Chair will determine the appropriate referral.
- C. The Board Chair shall appoint an appropriate number of members to serve on the standing committees, including one to serve as Committee Chair. The Board Chair has established the following standing committees:
  1. Agency Operations Committee (AOC). This committee is responsible for matters pertaining to agency operations. Responsibilities include:
    - a. Agency strategic plan;
    - a-b. Legislative Agenda;
    - b-c. Agency's legislative appropriations request;
    - e-d. Audit, Compliance, and IT functions;
    - d-e. Student loan portfolio;
    - e-f. Agency's continuous improvement initiatives; and
    - f-g. Any other issues, rules, reports, and studies relating to agency operations.
  2. Committee on Academic and Workforce Success (CAWS). This committee is responsible for all matters pertaining to academic excellence, research, health, and workforce development. Responsibilities include:
    - a. Academic and technical programs;
    - b. Data, information and reports relating to low producing degree programs;
    - c. Certificates of approval/accreditation;
    - d. Workforce Development (Perkins/Vocational Education);
    - e. Research programs;
    - f. GME and other health programs;
    - g. College Readiness and Success (TSI, Developmental Education, ABE, Educator Quality);
    - h. P-16 Outreach Initiatives;
    - i. Learning Technology;
    - j. Transfer Issues and Initiatives; and
    - k. Any other issues, rules, reports, and studies relating to academic excellence, research, health and workforce development.
  3. Committee on ~~Affordability, Accountability and Planning (CAAP)~~ Innovation, Data, and Education Analytics (IDEA). This committee is responsible for policy development, strategic planning for statewide higher education, and monitoring of the state's progress in achieving the goals of the strategic plan. Responsibilities include:
    - a. Long-term Strategic Plan for Texas Higher Education;
    - b. ~~Legislative Agenda~~;
    - c. Formula Funding;

- d. Data, information and reports relating to Campus Facilities;
- e. Accountability System;
- f. Financial Aid;
- g. Higher Education Strategic Plan Progress Reports;
- h. Institutional Cost Efficiencies; and
- i. Any other issues, rules, reports, and studies relating to affordability, accountability, and planning.

The performance appraisals of the Commissioner, General Counsel, and Director of Internal Audit and Compliance, as well as all rules developed through the negotiated rulemaking process, shall be considered by the full Board, not a Board standing committee.

#### D. Advisory Committees

1. The Board may establish advisory committees and shall appoint advisory committee members; however, a Board member may not serve as a member of an advisory committee.
2. The Board shall adopt rules to establish advisory committees in accordance with 19 Texas Administrative Code, Part 1, Chapter 1, Subchapter A, Section 1.6.

### **VII. BOARD RULES**

- A. **Rule Making Authority.** The rules adopted by the Board are part of a larger body of state agency rules that are collected and published by the Office of the Secretary of State as the Texas Administrative Code (TAC). Board rules are codified under Title 19, Part I, of the TAC. Title 19 is Education, and Part I is the Texas Higher Education Coordinating Board. The Board may adopt new rules or abolish or amend existing rules.
- B. **Rule Making Process.** The rulemaking process is primarily governed by Chapter 2001 of the Texas Government Code and is designed to permit and encourage stakeholder participation in rule making. The Agency also utilizes Chapter 2008 of that Code when it engages in negotiated rulemaking. The process shall follow Board rules, Chapter 1, Subchapter A, Rule 1.14. Rules that have been developed through negotiated rulemaking process are not considered by a Board committee before being considered by the full Board.
- C. **Rule Review Process.** In accordance with Texas Government Code, §2001.039, the Board shall review its rules every four years to ensure that statutory authority and the reasons for the rules continue to exist.
- D. **Filing Non-Substantive Rule Corrections with the Secretary of State.** The Commissioner of Higher Education or the Commissioner's designee may approve and file with the Secretary of State non-substantive corrections to the Board's rules. Non-substantive rule corrections may include typographical, grammatical, referencing, or spelling errors and technical edits to comply with Texas Register style and format requirements.

## **VIII. CONTRACTS AND MEMORANDA OF AGREEMENT**

### **A. Contracts.**

1. The Board shall execute interagency contracts to perform routine administrative functions and may execute other contracts as allowed by law.
2. The Board shall not contract for goods or services with a relative of a Board member unless the contract results from a competitive process in compliance with state purchasing laws. "Relative" for the purpose of this subsection shall be based on the civil law standard for determining degrees of relationship and shall mean any persons related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood). A Board member shall identify to the General Counsel any relative that may be considering a contractual relationship with the Board.

### **B. Delegation.** The Board Chair, Vice Chair, and Chair of the relevant Board standing committee may approve contracts on behalf of the Board in accordance with Board rule, Chapter 1, Subchapter A, Section 1.16.

## **IX. BOARD COMMUNICATIONS WITH THE MEDIA, ELECTED OFFICIALS, INSTITUTIONAL REPRESENTATIVES, AND STUDENTS**

### **A. Communications with the Media**

1. Reports on actions of the Board on matters of public interest will be given to the press as promptly as possible by the External Relations Department.
2. Statements on matters of an obviously controversial nature shall be made by the Board Chair or the Commissioner.
3. No Board member shall make or issue any public statement on an obviously controversial subject which might reasonably be construed as a statement of the official position of the Board without the advance approval of the Board Chair.
4. It is not the intent of this policy statement to stifle the right of freedom of speech of anyone speaking in a personal capacity where that person makes it clear that he or she is not speaking for the Board or the members of the Board. To the extent possible, Board members are expected to coordinate with the External Relations Department regarding any media contacts and press statements.

### **B. Communications with Elected Officials.** When a Board member would like to schedule a meeting with an elected official regarding matters relating to the Board, it is preferred the Board member request that the External Relations Department schedule the meeting, provide all necessary information/talking points, and accompany the Board member as needed/requested.

### **C. Communications with Institutional Representatives.** When a Board member is contacted by an administrator, faculty member, or governmental relations staff member from an institution of



higher education regarding a controversial issue relating to the Board, the Board member shall notify the Board Chair and Vice Chair.

- D. Student Complaints. When a Board member is contacted by a student with a complaint or request for information, it is preferred that the Board member refer the individual to the General Counsel's Office for further assistance. The General Counsel's Office shall notify the Board member how the complaint or request for information was handled by Agency staff.
- E. Speaking Invitations. When a Board member accepts an invitation to speak at a public event on behalf of the Board, it is preferred that the Board member contact the External Relations Department to request necessary information/talking points. The External Relations Department shall also notify the Board Chair and Vice Chair of the speaking invitation.

## **X. REQUESTS FOR DATA AND INFORMATION**

1. Information requests from or on behalf of an individual member of the Board seeking the compilation of significant quantities of information or data maintained by the agency will be reviewed by the Board Chair, the Commissioner, and General Counsel and, if necessary, discussed with the requesting Board member to determine the appropriate scope of the request and timing of the response to avoid inefficiencies and duplication of effort but shall also ensure that requests are fulfilled in a timely manner consistent with applicable law and policy.
2. Smaller requests for existing information or data that do not appear to require significant time or effort may be processed promptly by Agency staff.
3. Within 5 business days of the receipt of a Board member's information request, the requesting Board member will be provided with an estimated date for delivery or production. The Board requires Agency staff to respond thoroughly and appropriately to requests for information from a member of the Board without undue delay. In the rare circumstance when there are concerns about a Board member's request, the matter will be discussed with the Board member within 5 business days of receipt of the request. If concerns are unresolved following discussion with the Board member, the matter will be presented to the Board as quickly as possible, including by call of a special meeting if necessary. Upon vote, if any two or more Board members support the request, the request will be filled without delay.
4. This process is not intended nor will it be implemented to prevent a member of the Board from access to information or data that the Board member deems necessary to fulfill his or her official duties and responsibilities.

## **XI. MISCELLANEOUS**

- A. Fiscal Year. The fiscal year of the Board is the same as the official fiscal year of the State of Texas. It shall begin on September 1 and end on August 31 of each year.

- B. Minutes. Minutes of the Board and Board committee meetings shall be prepared and maintained, as required in the Open Meetings Act.
1. Minutes of the Board meetings shall be approved by the Board and signed by the Secretary of the Board. Minutes of the Board committee meetings shall be approved by the appropriate Board committee.
  2. Before the Board or Board committee approves the minutes of the last meeting, the minutes shall be sent to each member of the Board (or each member of the Board committee) for review, comment, and correction prior to approval.
  3. Minutes are available for public review as authorized by the Open Meetings Act. All books and records of the Board shall be stored according to the records retention schedules as set forth by the State Library and Archives Commission.
  4. The Board or a Board standing committee must make either a certified agenda or recording of each closed session, except for an executive session held by the Board or Board committee to consult with its attorney in accordance with section 551.071 of the Government Code (the Attorney/Client privilege section). If a certified agenda is kept, the presiding officer (i.e., the Board Chair, Committee Chair, or other member presiding during the closed session) must certify that the agenda is a true and correct record of the executive session. A certified agenda must include "(1) a statement of the subject matter of each deliberation, (2) a record of any further action taken, and (3) an announcement by the presiding officer at the beginning and the end of the closed meeting indicating the date and time." While such agenda does not have to be a verbatim transcript of the meeting, it must at least provide a brief summary of each deliberation.

Any Board member participating in a closed session knowing that a certified agenda or recording is not being made commits a Class C misdemeanor. The certified agenda or recording of an executive session shall be destroyed after two years (absent litigation or threat thereof), in accordance with state law. A certified agenda or recording of an executive session is confidential. A person who knowingly and without lawful authority makes these records public commits a Class B misdemeanor and may be held liable for actual damages, court costs, reasonable attorney fees, and punitive damages. Section 551.104 provides for court-ordered access to the certified agenda or recording under specific circumstances.

A Board member has a right to inspect the certified agenda or tape recording of a closed meeting, even if he or she did not participate in the meeting. This is not a release to the public in violation of the confidentiality provisions of the Act, because a Board member is not a member of the public within that prohibition. A Board member may not copy the recording or certified agenda of a closed meeting, nor may a former member inspect these records once he or she leaves office.

## **XII. POLICIES AND PROCEDURES: GUIDELINES**

- A. Effective Date of Policies and Procedures. These policies and procedures and any amendments to them shall become effective upon approval of the Board.
- B. Amendments to Policies and Procedures. Any of these policies and procedures may be altered, amended, or repealed, and new policies and procedures may be adopted by an affirmative vote of a majority of the Board, unless to do so would be contrary to law.
- C. The Board Operating Policies and Procedures create no substantive or procedural rights. They are guidelines for the Board's internal governance only.
- D. The Board Operating Policies and Procedures shall be reviewed by the Board in October of even numbered years unless (1) an earlier modification is required by law or (2) a proposal is made by a Board member to modify such policies and procedures at an earlier date.

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