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## **4001 Budget**

The board shall adopt a budget each year to support the ESU's programs and services for the ensuing fiscal year. The administrator shall be responsible for developing the budget subject to the direction and decisions of the board. The budget document shall be under continuous development, based upon the requirements of the adopted educational program.

**Proposed Budget.** The administrator shall prepare the proposed budget in accordance with board policies and goals, state statutes, and regulations. As the district's spending plan, the budget will be based on up-to-date revenue estimates, and will reflect the assessed needs and programs approved by the board.

**Budget Hearing Notice.** Notice of place and time of the hearing, together with a summary of the proposed budget statement, must be published at least four calendar days prior to the date set for hearing in a newspaper of general circulation within the ESU. The four calendar days shall include the day of publication but not the day of hearing.

**Budget Hearing.** The board must conduct a hearing prior to adopting the budget. The hearing must be held separately from any regularly scheduled meeting and may not be limited by time. The board must make a presentation outlining key provisions of the proposed budget statement, including, but not limited to, a comparison with the prior year's budget. Any member of the public desiring to speak on the proposed budget statement shall be allowed to address the board at the hearing and must be given a reasonable amount of time to do so. Five minutes shall generally be considered a reasonable amount of time.

**Budget Hearing Documents.** The board must make at least three copies of the proposed budget statement and at least one copy of all other reproducible written material to be discussed at the hearing available to the public at the hearing.

**Budget Adoption.** After the budget hearing, the proposed budget statement shall be adopted or amended and adopted as amended. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of the changes (including the items changed and the reasons for such changes) must be published in a newspaper of general circulation within the ESU within twenty calendar days after its adoption without further hearing.

**Certification and Filing.** The amount to be received from personal and real property taxation shall be certified to the appropriate levying board as provided by law. The budget shall also be filed with the state auditor.

**Purchase Authorization.** Except for bids required under the section "Bid Letting and Contracts," the board's adoption of the budget shall authorize the purchases without further board action.

**Monthly Report.** At each monthly board meeting, the administrator will provide a report on the current status of the major sections of the budget.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

## **4002 Deposits**

The board shall designate the depository or depositories for all ESU funds. All funds received by the ESU shall be deposited promptly in the proper account of each such depository. All funds shall be insured by the Federal Deposit Insurance Corporation or a surety bond approved by the board on securities of the United States government pledged by joint custody receipt.

Funds collected by ESU employees shall be handled with prudent business procedures. All fund collected shall be receipted, accounted for, and directed without delay to the proper depository.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

## **4003**

### **Bidding for Construction, Remodeling, Repair, or Site Improvement**

#### **I. Applicability of this policy.**

Construction and contracts undertaken with federal funds, whether those funds are derived directly from the federal government (e.g. award of a federal grant) or are derived by pass-through awards from the Nebraska Department of Education (e.g. special education funds, school lunch funds, Title I funds) are subject to the policy on Construction with Federal Funds, which is found elsewhere in this section.

This policy applies to all other purchases and contracts made by the ESU for construction, remodeling, repair and other site improvements.

#### **II. Projects with an Estimated Cost of Less than \$109,000**

- A. The ESU will solicit quotes and/or estimates for all projects with an estimated cost of less than \$109,000.
- B. Prior to solicitation of the quotes and/or estimates, the administrator will determine whether the ESU will accept oral submissions.
- C. Quotes and/or estimates may be solicited by the administrator or his/her designee without board action.
- D. The terms of any construction project undertaken pursuant to this policy will be memorialized in a written contract which has been reviewed by the ESU's legal counsel and approved by the board.
- E. The ESU may use a Nebraska state-wide cooperative purchasing program in lieu of obtaining quotes or bids under this policy to the extent such a bid or quote is not otherwise independently required by law.
- F. Nothing in this subsection prohibits or requires the use of the formal bidding procedures. If the ESU is going to solicit formal bids for projects of less than \$109,000 they must follow the formal procedures outlined in this policy.

#### **III. Formal Bidding for Major Purchases and Construction**

- A. The board will generally advertise for bids when the contemplated expenditure of the project exceeds \$109,000 for the construction, remodeling, or repair of a school-owned building or for site improvement.
- B. In projects that involve professional engineering or architecture, the board will have a registered professional engineer or architect prepare the plans, specifications, and estimates when the anticipated cost of the project exceeds \$118,000.

### C. Advertising for Bids

1. The administrator or designee will arrange to advertise for bids under this section by publishing notice in any newspaper of general circulation within the ESU at least 7 calendar days prior to the date on which bids are due.
2. Nothing in this policy shall prevent the administrator or designee from advertising in additional media outlets or for a longer period of time.

### D. Bid Documents

1. The bid documents shall identify the day upon which the bids shall be returned, received or opened and shall identify the hour at which the bids will close or be received or opened.
2. The invitation for bids will be sufficiently certain and specific, will include any specifications and pertinent attachments, and will define the items or services in order to allow the bidder to properly respond.
3. The bid documents shall also provide that such bids shall be opened simultaneously in the presence of the bidders or their representatives.
4. Bids received after the date and time specified in the bid documents shall be returned to the bidder unopened.
5. If bids are being opened on more than one contract, the board, in its discretion, may award each contract as the bids are opened.
6. Sealed bids will be opened in a place and at the specific time stated in the bid form. Bidders shall be notified of the opening and invited to be present.
7. The board shall have discretion in determining which bidders are responsible and responsive and shall award the contract to the lowest, responsible, and responsive bidder whose bid meets the bid specifications.

E. Any or all bids may be rejected if there is a sound documented reason

F. The terms of any construction project undertaken pursuant to this

policy will be memorialized in a written contract which has been reviewed by the ESU's legal counsel and approved by the board.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

## **4003.1**

### **Bidding for Construction, Remodeling, Repair, or Related Projects Financed with Federal Funds**

#### **1. Applicability of the Policy**

This policy applies only to construction and contracts undertaken with federal funds which are subject to the federal Uniform Grant Guidance (UGG) and other applicable federal law, including but not limited to the Education Department and General Administration Regulations (EDGAR) and the United States Department of Agriculture (USDA) regulations governing school food service programs. In the event this policy conflicts or is otherwise inconsistent with mandatory provisions of the UGG, EDGAR or other applicable federal law, the mandatory provisions of the laws shall control.

The ESU will generally comply with the requirements of the public lettings laws (NEB. REV. STAT. §§ 73-101 through 73-106) when the contemplated expenditure for the complete project exceeds \$109,000, the Political Subdivisions Construction Alternatives Act (NEB. REV. STAT. §§ 13-2901 through 13-2914), energy financing contracts (NEB. REV. STAT. §§ 66-1062 through 66-1066), other applicable state laws, and the board's general policy on Bidding for Construction and Related Projects. In addition, all procurement and construction shall comply with the rules and requirements of 2 CFR part 200.317 through 200.326 and 34 CFR sections 75.601 through 75.615. In the event of a conflict between state and federal law, the more stringent requirement shall apply.

#### **2. All projects undertaken pursuant to this policy will be subject to the following bond requirements**

- A.** A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may



be required within the time specified.

- B.** A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- C.** A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **3. Construction Projects with an Anticipated Cost of Under \$250,000**

- **A.** Methods of Bidding/Soliciting Quotations or Estimates

The type of procedures required depends on the anticipated cost of the project.

- 1.** Construction with an Anticipated Cost of up to \$10,000 (Micro-Purchases)

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the annual aggregate amount of which does not exceed \$10,000. Micro-purchases may be made or awarded without soliciting competitive quotations, to the extent ESU staff determine that the cost of the purchase is reasonable. For purposes of this policy "reasonable" means the purchase is comparable to market prices for the geographic area.

To the extent practicable, the ESU distributes micro-purchases equitably among qualified suppliers. The ESU will follow its standard policy on purchasing, which can be found earlier in this subsection.

- 2.** Construction with an Anticipated Cost of between \$10,000 and \$250,000 (Small Purchase Procedures)

For construction projects subject to this policy, small purchases are purchases that, in the aggregate amount, is more than \$10,000 and less than \$250,000 annually. For small purchases, price or rate quotes shall be obtained in advance from a reasonable number of qualified sources

as detailed in the ESU's standard policies on purchasing and on bid letting and contracts, which can be found earlier in this subsection.

- **B.** Construction Projects with an estimated cost of \$109,000 and over will be made pursuant to the ESU's Policy on Bid Letting and Contracts.

#### **4. Construction Projects with an Anticipated Cost Over \$250,000**

- **A.** Sealed Bids: All constructions projects subject to this policy with an anticipated cost of \$250,000 will be publicly solicited using the sealed bid method

**1.** Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publicly advertised;

**2.** The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

**3.** Sealed bids will be publicly opened in a place and at the specific time stated in the bid solicitation. Bidders shall be notified of the opening and invited to be present.

**4.** The contract will be awarded to the lowest responsive and responsible bidder.

a) Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.

b) Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

c) Any or all bids may be rejected if there is a sound documented reason.

**5.** The board shall have discretion in determining which bidders are responsible and responsive and shall award the contract to the lowest, responsible, and responsive bidder whose bid meets the bid specifications. This means that the board will select the bid that offers the best value and award a contract based upon the amount of the bid and the bidder's ability and capacity to carry on the work, its equipment and facilities, honesty, integrity, skills, business judgment, experience, equipment, facilities,

financial stability, past performance, and other relevant factors.

**6.** The board will generally complete its review of bids and select a vendor within 30 days of bid submission.

○ **B.** Advertising for Bids.

▪ **1.** The administrator or designee will arrange to advertise for bids by publishing notice in any newspaper of general circulation within the school ESU at least 7 calendar days prior to the date on which bids are due.

▪ **2.** Nothing shall prevent the administrator or designee from advertising in additional media outlets or for a longer period of time.

○ **C.** Bid Documents

▪ **1.** The bid documents shall identify the day upon which the bids shall be returned, received, or opened and shall identify the hour at which the bids will close or be received or opened.

▪ **2.** The bid documents shall also provide that such bids shall be opened simultaneously in the presence of the bidders or their representatives.

▪ **3.** Bids received after the date and time specified in the bid documents shall be returned to the bidder unopened.

▪ **4.** If bids are being opened on more than one contract, the board, in its discretion, may award each contract as the bids are opened.

▪ **5.** Sealed bids will be opened in a place and at the specific time stated in the bid solicitation. Bidders shall be notified of the opening and invited to be present.

▪ **6.** Bids will be reviewed by the Administrator and/or designee and submitted to the board for approval.

**7.** The board shall have discretion in determining which bidders are responsible and responsive and shall award the contract to the lowest, responsible, and responsive bidder whose bid meets the bid specifications. This means that the board will select the bid that offers the best value and award a contract based upon the amount of the bid and the bidder's ability and capacity to

carry on the work, its equipment and facilities, honesty, integrity, skills, business judgment, experience, equipment, facilities, financial stability, past performance, and other relevant factors.

**8.** The board will generally complete its review of bids and select a vendor within 30 days of bid submission.

**D.** The terms of any construction project undertaken pursuant to this policy will be memorialized in a written contract which has been reviewed by the ESU's legal counsel and approved by the board.

## **5. Other Contract Matters**

### **A. Required Terms**

The non-Federal entity's contracts must contain the applicable provisions required by section 200.326 and described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. This includes a "Buy American" provision that provides that as appropriate and to the extent consistent with law, the ESU and contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of the Buy American provision must be included in all subawards including all contracts and purchase orders for work or products under this award.

### **B. Contracting with Certain Vendors**

Pursuant to the standards contained in 2 C.F.R. § 200.321, the ESU will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible and consistent with state law.

### **C. Full and Open Competition**

The ESU's procurement transactions will be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319.

### **D. Debarment and Suspension**

The ESU awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed

procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The ESU may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000 the ESU verifies that the vendor with whom the ESU intends to do business with is not excluded or disqualified. 2 C.F.R. Part 200, Appendix II(1) and 2 C.F.R. §§ 180.220 and 180.300.

The ESU will verify debarment or suspension by revising the excluded parties list on SAM.gov, collecting a certification through the bidding process, and/or by including a debarment and suspension provision in the bid and contract documents. The Administrator or his/her designee shall be responsible for such verification.

#### **E. Settlements of Issues Arising Out of Contract**

The ESU alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the ESU of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

#### **F. Record Keeping**

##### **1. Record Retention**

- a. The ESU maintains all records that fully show (1) the amount of funds under the grant or subgrant; (2) how the subgrantee uses those funds; (3) the total cost of each project; (4) the share of the total cost of each project provided from other sources; (5) other records to facilitate an effective audit; and (6) other records to show compliance with federal program requirements. 34 C.F.R. §§ 76.730-.731 and §§ 75.730-.731. The ESU also maintains records of significant project experiences and results. 34 C.F.R. § 75.732. These records and accounts must be retained and made available for programmatic or financial audit.

- b. The U.S. Department of Education is authorized to recover any federal funds misspent within 5 years before the receipt of a program determination letter. 34 C.F.R. § 81.31(c). Record Retention Schedules of the Nebraska Records Management Division as approved by the Nebraska Secretary of State/State Records Administrator requires the ESU to maintain records regarding construction projects for a minimum of five (5) years after the sale or demolition of the building. However, if any litigation, claim, or audit is started before the expiration of the record retention period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 C.F.R. § 200.333.
- c. Records will be destroyed in compliance with Record Retention Schedules and state law. This includes the completion of a Records Disposition Report.

## 2. Maintenance of Construction Records for Projects Financed with Federal Funds

- a. The ESU must maintain records sufficient to detail the history of all construction projects financed with federal funds. These records will include, but are not necessarily limited to the following: rationale for the method of construction, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.
- b. Retention of construction records shall be in accordance with applicable law and Board policy.

## 6. **Conflict of Interest and Code of Conduct**

**A.** Board and staff member conflicts of interest are governed by the ESU's conflict of interest policies.

**B.** Contracts covered by this policy are subject to the following

additional provisions.

1. Employees, officers, and agents engaged in the selection, award, and/or administration of ESU contracts which are prohibited from engaging in such actions if a real or apparent conflict of interest is present.
2. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
3. The board may determine at its discretion that a financial interest is not substantial enough to give rise to a conflict of interest.

#### **C. Favors and Gifts**

The officers, employees, and agents of the ESU may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, except that this provision does not prohibit the receipt of unsolicited items of nominal value. For purposes of this policy, "nominal value" means a fair market value of \$25 or less.

#### **D. Enforcement**

Disciplinary Actions will be applied for violations of such standards by officers, employees, or agents of the ESU at the board's discretion.

## **7. Financial Management**

### **A. Identification.**

- The ESU will identify, in its accounts, all federal awards received and expended and the federal programs under which they were received. Federal program and award identification include, as applicable, the CFDA title and number, federal award identification number and year, name of the federal agency, and, if applicable, name of the pass-through entity.

## **B. Financial Reporting**

- The ESU will make an accurate, current, and complete disclosure of the financial results of each federal award or program in accordance with the financial reporting requirements set forth in the Education Department General Administrative Regulations (EDGAR).

## **C. Accounting Records**

- The ESU maintains records which adequately identify the source and application of funds provided for federally-assisted activities. These records must contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

## **D. Internal Controls**

- The Administrator or his/her designee must maintain effective control and accountability for all funds, real and personal property, and other assets through board review and approval of claims, an annual audit of the ESU's finances pursuant to the applicable Nebraska Department of Education and federal rules and regulations, and comparison of expenditures and outlays to budgeted amounts. The ESU adequately safeguards all such property and assures that it is used solely for authorized purposes.
  - Budget Control
- Actual expenditures or outlays will be compared with budgeted amounts for each federal award at least annually and more often as required by law or deemed prudent by the board or administrative staff.

## **E. Payment Methods**

The ESU will comply with applicable methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement by the ESU, in accordance with the Cash Management Improvement Act at 31 CFR Part 205. Generally, the ESU receives payment from the Nebraska Department of Education on a reimbursement basis. 2 CFR § 200.305. However, if the ESU receives an advance in federal grant funds, the ESU will remit interest earned on the advanced payment quarterly to the federal agency. The ESU may retain interest amounts up to \$500 per year for administrative expenses. 2 CFR § 200.305(b)(9).



Consistent with state and federal requirements, the ESU will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for the Nebraska Department of Education to review upon request.

**F. Allowability of Costs**

Expenditures must be aligned with approved budgeted items. Any changes or variations from the state-approved budget and grant application need prior approval.

When determining how the ESU will spend its grant funds, the Administrator or his/her designee will review the proposed cost to determine whether it is an allowable use of federal grant funds before obligating and spending those funds on the proposed good or service. All costs supported by federal education funds must meet the standards outlined in EDGAR, 2 CFR Part 3474 and 2 CFR Part. The Administrator or his/her designee must consider these factors when making an allowability determination.

The Administrator or his/her designee will consider Part 200's cost guidelines when federal grant funds are expended. The Administrator or his/her designee will also consider whether all state - and ESU-level requirements and policies regarding expenditures have been followed.

**G. Use of Program Income – Deduction, Addition, or Cost Sharing or Matching**

The default method for the use of program income for the ESU is the deduction method. 2 C.F.R. § 200.307(e). Under the deduction method, program income is deducted from total allowable costs to determine the net allowable costs. Program income will only be used for current costs unless the ESU is otherwise directed by the federal awarding agency or pass-through entity. 2 C.F.R. § 200.307(e)(1). The ESU may also request prior approval from federal awarding agency to use addition method. Under the addition method, program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must then be used for the purposes and under the conditions of the Federal award. 2 C.F.R. § 200.307(e)(2). The ESU may also request prior approval from the Federal awarding agency to use the cost sharing or matching method.

While the deduction method is default method, the ESU always refers to the grant award notice prior to determining the appropriate use of program income.

## Cost Sharing or Matching

For all Federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

- (1) Are verifiable from the non-Federal entity's records;
- (2) Are not included as contributions for any other Federal award;
- (3) Are necessary and reasonable for accomplishment of project or program objectives;
- (4) Are allowable under subpart E (Cost Principles) of this part;
- (5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
- (6) Are provided for in the approved budget when required by the Federal awarding agency; and
- (7) Conform to other provisions of this part; as applicable.

## H. Documentation of Personnel Expenses

Records that reflect charges to Federal awards for salaries and wages will comply with the rules and requirements of 2 CFR 200.430.

## 8. Other Contract Matters

### A. Required Terms

The non-Federal entity's contracts must contain the applicable provisions required by section 200.326 and described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. This includes a "Buy American" provision that provides that as appropriate and to the extent consistent with law, the ESU and contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of the Buy American

provision must be included in all subawards including all contracts and purchase orders for work or products under this award.

### **B. Contracting with Certain Vendors**

Pursuant to the standards contained in 2 C.F.R. § 200.321, the ESU will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible consistent with state law.

To the maximum extent practicable, the school food program shall purchase domestic commodities or products produced in US or processed in US substantially using agricultural commodities produced in US.

### **C. Record Keeping**

#### **1. Record Retention**

a) The ESU maintains all records that fully show (1) the amount of funds under the grant or subgrant; (2) how the subgrantee uses those funds; (3) the total cost of each project; (4) the share of the total cost of each project provided from other sources; (5) other records to facilitate an effective audit; and (6) other records to show compliance with federal program requirements. 34 C.F.R. §§ 76.730-.731 and §§ 75.730-.731. The ESU also maintains records of significant project experiences and results. 34 C.F.R. § 75.732. These records and accounts must be retained and made available for programmatic or financial audit.

b) The U.S. Department of Education is authorized to recover any federal funds misspent within 5 years before the receipt of a program determination letter. 34 C.F.R. § 81.31(c). Schedule 10 (Local School ESUs) and Schedule 24 (Local Agencies General Records) of the Nebraska Records Management Division as approved by the Nebraska Secretary of State/State Records Administrator requires the ESU to maintain records regarding federal awards for a minimum of six (6) years. Consequently, the ESU shall retain records for a minimum of six (6) years from the date on which the final Financial Status Report is submitted, unless otherwise notified in writing to extend the retention period by the awarding agency, cognizant

agency for audit, oversight agency for audit, or cognizant agency for indirect costs. However, if any litigation, claim, or audit is started before the expiration of the record retention period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 C.F.R. § 200.333.

c) Records will be destroyed in compliance with Schedule 10, Schedule 24, and State law. This includes the completion of a Records Disposition Report.

2. Maintenance of Procurement Records

a) The ESU must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

b) Retention of procurement records shall be in accordance with applicable law and Board policy.

**D. Privacy**

The ESU has protections in place to ensure that the personal information of both students and employees is protected. These include the use of passwords that are changed on a regular basis; staff training on the requirements of the Family Educational Rights and Privacy Act (FERPA) and State confidentiality requirements; and training on identifying whether an individual requesting access to records has the right to the documentation.

Adopted on: June 21, 2021

Revised on: June 19, 2023

Reviewed on: January 15, 2024

## **4004**

### **General Purchasing and Procurement**

- **I. Applicability of this policy.**

Purchases made with federal funds, whether those funds are derived directly from the federal government (e.g. award of a federal grant) or are derived by pass-through awards from the Nebraska Department of Education (e.g. special education funds, school lunch funds, Title I funds) are subject to the policy on Purchasing and Procurement with Federal Funds, which is found elsewhere in this section.

This policy applies to all other purchases made by the ESU other than construction, remodeling, repair and site improvements.

- **II. General Purchasing Policy**

**A.** The ESU's budget shall be the guide for all purchases. No employee of the ESU may make a purchase that is not provided for in the budget without board or administrative approval.

**B.** The board intends to purchase competitively, whenever possible, without prejudice and to seek maximum educational value for every dollar expended.

**C.** The acquisition of services, equipment and supplies shall be centralized in the administration office under the supervision of the administrator, who shall be responsible for developing and administering the purchasing program of the ESU.

**D.** Purchases or commitments of ESU funds that are not authorized by this policy will be the responsibility of the person making the commitment.

- **III. Building-Specific Purchasing**

**A.** The ESU office building is operationally under the control of the ESU Administrator. The Administrator shall have control and responsibility for the building and grounds, for all supplies and equipment housed at the building, for all ESU-related activities in the building, and for

all employees assigned to the building.

- B.** Directors/Coordinators, in consultation with their staff, are responsible for requisitioning, managing, distributing, and utilizing supplies within the building.
- C.** The administrator or his designee is responsible for the requisitioning, managing, distributing, and utilizing of supplies for maintenance and transportation.
- D.** The administration is responsible for purchasing of goods, services and supplies and for providing the necessary forms for establishing efficient procedures to facilitate the process.

- **IV. Purchasing Procedures**

- A.** ESU personnel must secure the approval of an authorized administrator before making any purchases.
- B.** Employees seeking reimbursement for a purchase made with their personal funds must attach an itemized receipt or invoice to all requests for reimbursement; must sign all purchase receipts or charge slips; and must submit itemized receipts and any purchasing card or credit card receipts to the office of the administrator no later than one week prior to the next regular board meeting. A non-itemized credit card receipt is not sufficient.
- C.** Employees making purchases with a ESU credit card or purchasing program must comply with the steps set forth in the ESU's Purchasing (Credit) Card Program.
- D.** All purchases of goods and services made with ESU funds must be made on a properly executed purchase order or equivalent online form.
- E.** All purchases shall be initiated with a purchase order or equivalent online form. Purchase orders are signed by the person responsible

for that particular budget and finally by the administrator.

- F.** For purchases of more than \$10,000, authorized staff members must secure written quotes and/or estimates from a reasonable number of vendors. Staff will purchase from a responsible vendor with the lowest price unless the board approves the purchase from the more expensive vendor.

## **5. Relations with Vendors**

- G.** The board wishes to maintain good working relations with vendors who supply materials, supplies and services to the ESU. The ESU shall not extend favoritism to any vendors. Each order shall be placed on the basis of quality, price and delivery, with past services being a factor if all other considerations are equal. The administrative team may, in its discretion, use a Nebraska a state-wide cooperative purchasing program in lieu of obtaining quotes or bids under this policy to the extent such a bid or quote is not otherwise independently required by law.

- H.** No purchase shall be made that violates any conflict of interest policy or law.

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- I.** No employee shall endorse any product of any type or kind in such a manner as will identify him/her in any way as an employee of the ESU.

- J.** The board believes in patronizing local businesses. Consequently, when proposals are judged to be equal in terms of quality, price, and/or service, the contract or purchase will be awarded to the firm that is located within the ESU. However, the board will not sacrifice either quality or economy to patronize local businesses.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4004.1**  
**Fiscal Management for Purchasing and Procurement**  
**Using Federal Funds**

**1. Applicability of Policy**

This policy applies only to non-construction related purchases undertaken with federal funds which are subject to the federal Uniform Grant Guidance (UGG) and other applicable federal law, including but not limited to the Education Department and General Administration Regulations (EDGAR) and the United States Department of Agriculture (USDA) regulations governing school food service programs. In the event this policy conflicts or is otherwise inconsistent with mandatory provisions of the UGG, EDGAR or other applicable federal law, the mandatory provisions of the laws shall control.

All other non-construction purchases will be governed by the board's general purchasing policy, which can be found earlier in this subsection. In the event of a conflict between state and federal law, the more stringent requirement shall apply.

This procurement policy shall govern all purchasing activities that relate to any aspect of the National School Lunch and Breakfast Programs. The ESU's goal is to fully implement all required procurement rules, regulations and policies set forth in 2 CFR 200, 7 CFR parts 210, 3016 and 3019, and by the Nebraska Department of Education.

**2. Procurement System**

The ESU maintains the following purchasing procedures.

**A. Responsibility for Purchasing**

The authority to make purchases shall be governed by the ESU's purchasing policy, which can be found elsewhere in this section. Except as otherwise provided in the ESU's purchasing policy, the acquisition of services, equipment, and supplies shall be centralized in the administration office under the supervision of the administrator, who shall be responsible for developing and administering the purchasing program of the ESU. Purchases or commitments of ESU funds that are not authorized by this policy will be the responsibility of the person making the commitment.

**B. Methods of Purchasing**



The type of purchase procedures required depends on the cost of the item(s) being purchased.

### **1. Purchases up to \$10,000 (Micro-Purchases)**

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the annual aggregate amount of which does not exceed \$10,000. Micro-purchases may be made or awarded without soliciting competitive quotations, to the extent ESU staff determine that the cost of the purchase is reasonable. For purposes of this policy "reasonable" means the purchase is comparable to market prices for the geographic area.

To the extent practicable, the ESU distributes micro-purchases equitably among qualified suppliers. The ESU will follow its standard policy on purchasing, which can be found earlier in this subsection.

### **2. Purchases between \$10,000 and \$250,000 (Small Purchase Procedures)**

Small purchases are purchases that, in the aggregate amount, is more than \$10,000 and less than \$250,000 annually. For small purchases, price or rate quotes shall be obtained in advance from a reasonable number of qualified sources as detailed in the ESU's standard policies on purchasing and on bid letting and contracts, which can be found earlier in this subsection.

### **3. Purchases Over \$250,000**

#### **a) Sealed Bids (Formal Advertising)**

For purchases over \$250,000, the ESU will generally follow the bidding process outlined in the board's policy on Bidding for Construction, Remodeling, Repair or Site Improvement.

#### **b) Contract/Price Analysis**

The ESU performs a cost or price analysis in connection with every procurement action in excess of \$250,000, including contract modifications. The ESU will make an independent estimate of costs prior to receiving bids or proposals.

### **4. Noncompetitive Proposals (Sole Sourcing)**

- a) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
  - (1) The item is available only from a single source;
  - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - (3) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the ESU; or
  - (4) After solicitation of a number of sources, competition is determined inadequate.
- b) Noncompetitive proposals may only be solicited with the approval of the Administrator or the board. Sufficient and appropriate documentation that justifies the sole sourcing decision must be maintained by the Administrator or designee.
- c) A cost or price analysis will be performed for noncompetitive proposals when the price exceeds \$250,000.

## **5. Competitive Proposals**

- a) The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
  - 1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

- 2) Proposals must be solicited from an adequate number of qualified sources; and
  - 3) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
- b) The ESU may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- c) The ESU may select a proposal that offers the best value and that is based upon the proposer's responsiveness to the proposal, experience, reputation, staff qualifications, ability and capacity to carry on the work, price, honesty, integrity, skills, business judgment, financial stability, past performance, and other relevant factors. The evaluation may be conducted by the board, a designated committee, or another designee of the board.

#### **C. Use of Purchase (Debit & Credit) Cards**

ESU use of purchase cards is subject to the policy on purchase cards which can be found elsewhere in this subsection.

#### **D. Federal Procurement System Standards**

The ESU's procurement transactions will be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319.

The ESU will maintain and follow general procurement standards consistent with 2 C.F.R. §200.318.

#### **E. Debarment and Suspension**

The ESU awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The ESU may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000 the ESU verifies that the vendor with whom the ESU intends to do business with is not excluded or disqualified. 2 C.F.R. Part 200, Appendix II(1) and 2 C.F.R. §§ 180.220 and 180.300.

The ESU will verify debarment or suspension by revising the excluded parties list on SAM.gov, collecting a certification through the bidding process, and/or by including a debarment and suspension provision in the bid and contract documents. The Administrator or his/her designee shall be responsible for such verification.

#### **F. Settlements of Issues Arising Out of Procurements**

The ESU alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the ESU of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

### **3. Conflict of Interest and Code of Conduct**

**A.** Board and staff member conflicts of interest are governed by the ESU's conflict of interest policies.

**B.** Purchases covered by this policy are subject to the following additional provisions.

**1.** Employees, officers, and agents engaged in the selection, award, and/or administration of ESU contracts which are prohibited from engaging in such actions if a real or apparent conflict of interest is present.

**2.** Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his

or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

**3.** The board may determine at its discretion that a financial interest is not substantial enough to give rise to a conflict of interest.

### **C. Favors and Gifts**

The officers, employees, and agents of the ESU may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, except that this provision does not prohibit the receipt of unsolicited items of nominal value. For purposes of this policy, "nominal value" means a fair market value of \$25 or less.

### **D. Enforcement**

Disciplinary Actions including, but not limited to, counseling, oral reprimand, written reprimand, suspensions without pay, or termination of employment, will be applied for violations of such standards by officers, employees, or agents of the ESU.

## **4. Property Management Systems**

### **A. Property Classifications**

**1.** Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the ESU for financial statement purposes, or \$5,000.

**2.** Supplies means all tangible personal property other than those described in §200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the ESU for financial statement purposes or \$5,000, regardless of the length of its useful life. 2 C.F.R. §200.94.

**3.** Computing Devices means machines used to acquire, store, analyze, process, and publish data and other information

electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. 2 C.F.R. §200.20.

**4.** Capital Assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and

b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). 2 C.F.R. §200.12.

## **B. Inventory Procedure**

Newly purchased property shall be received and inspected by the staff member who ordered it to ensure that that it matches the purchase order, invoice, or contract and that it is in acceptable condition.

Equipment, Computing Devices, and Capital Assets must be tagged with an identification number, manufacturer, model, name of individual who tagged the item, and date tagged).

## **C. Inventory Records**

For equipment, computing devices, and capital assets purchased with federal funds, the following information is maintained in the property management system:

- 1.** Serial number;
- 2.** ESU identification number;
- 3.** Manufacturer;
- 4.** Model;
- 5.** Date tagged and individual who tagged it;
- 6.** Source of funding for the property;
- 7.** Who holds title;
- 8.** Acquisition date and cost of the property;

- 9.** Percentage of federal participation in the project costs for the federal award under which the property was acquired;
- 10.** Location, use and condition of the property; and
- 11.** Any ultimate disposition data including the date of disposal and sale price of the property.

The inventory list shall be adjusted by the administrator or his/her designee for property that is sold, lost, stolen, cannot be repaired, or that cannot be located.

#### **D. Physical Inventory**

- 1.** A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- 2.** The Administrator or his/her designee will ensure that the physical inventory is performed. The physical inventory will generally occur during the months of June or July, but may be conducted during other time periods with the approval of the Administrator.

#### **E. Maintenance**

In accordance with 2 C.F.R. 313(d)(4), the ESU maintains adequate maintenance procedures to ensure that property is kept in good condition.

#### **F. Lost or Stolen Items**

The ESU maintains a control system that ensures adequate safeguards are in place to prevent loss, damage, or theft of the property.

#### **G. Use of Equipment**

Equipment must be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the federal award, and the ESU will not encumber the property for any non-federal program use without prior approval of the federal awarding agency and the pass-through entity.

#### **H. Disposal of Equipment**

When it is determined that original or replacement equipment acquired under

a federal award is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Administrator or his/her designee will contact the awarding agency (or pass-through for a state-administered grant) for disposition instructions.

If the item has a current FMV of \$5,000 or less, it may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency.

#### **I. Equipment and Capital Expenditures**

All equipment and capital expenditures shall comply with the rules and requirements of 2 CFR 200.439.

#### **J. Depreciation**

All depreciation shall comply with the rules and requirements of 2 CFR 200.436.

### **5. Financial Management**

#### **A. Identification**

- The ESU will identify, in its accounts, all federal awards received and expended and the federal programs under which they were received. Federal program and award identification include, as applicable, the CFDA title and number, federal award identification number and year, name of the federal agency, and, if applicable, name of the pass-through entity.

#### **B. Financial Reporting**

- The ESU will make an accurate, current, and complete disclosure of the financial results of each federal award or program in accordance with the financial reporting requirements set forth in the Education Department General Administrative Regulations (EDGAR).

#### **C. Accounting Records**

- The ESU maintains records which adequately identify the source and application of funds provided for federally-assisted



activities. These records must contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

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#### **D. Internal Controls**

- The Administrator or his/her designee must maintain effective control and accountability for all funds, real and personal property, and other assets through board review and approval of claims, an annual audit of the ESU's finances pursuant to the applicable Nebraska Department of Education and federal rules and regulations, and comparison of expenditures and outlays to budgeted amounts. The ESU adequately safeguards all such property and assures that it is used solely for authorized purposes.

#### **E. Budget Control**

- Actual expenditures or outlays will be compared with budgeted amounts for each federal award at least annually and more often as required by law or deemed prudent by the board or administrative staff.

#### **F. Payment Methods**

The ESU will comply with applicable methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement by the ESU, in accordance with the Cash Management Improvement Act at 31 CFR Part 205. Generally, the ESU receives payment from the Nebraska Department of Education on a reimbursement basis. 2 CFR § 200.305. However, if the ESU receives an advance in federal grant funds, the ESU will remit interest earned on the advanced payment quarterly to the federal agency. The ESU may retain interest amounts up to \$500 per year for administrative expenses. 2 CFR § 200.305(b)(9).

Consistent with state and federal requirements, the ESU will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for the Nebraska Department of Education to review upon request.

## **G. Allowability of Costs**

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Expenditures must be aligned with approved budgeted items. Any changes or variations from the state-approved budget and grant application need prior approval.

When determining how the ESU will spend its grant funds, the Administrator or his/her designee will review the proposed cost to determine whether it is an allowable use of federal grant funds before obligating and spending those funds on the proposed good or service. All costs supported by federal education funds must meet the standards outlined in EDGAR, 2 CFR Part 3474 and 2 CFR Part. The Administrator or his/her designee must consider these factors when making an allowability determination.

- The Administrator or his/her designee will consider Part 200's cost guidelines when federal grant funds are expended. The Administrator or his/her designee will also consider whether all state - and ESU-level requirements and policies regarding expenditures have been followed.

## **H. Use of Program Income – Deduction, Addition, or Cost Sharing or Matching**

### **6.**

The default method for the use of program income for the ESU is the deduction method. 2 C.F.R. § 200.307(e). Under the deduction method, program income is deducted from total allowable costs to determine the net allowable costs. Program income will only be used for current costs unless the ESU is otherwise directed by the federal awarding agency or pass-through entity. 2 C.F.R. § 200.307(e)(1). The ESU may also request prior approval from federal awarding agency to use addition method. Under the addition method, program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must then be used for the purposes and under the conditions of the Federal award. 2 C.F.R. § 200.307(e)(2). The ESU may also request prior approval from the Federal awarding agency to use the cost sharing or matching method.

### **7.**

While the deduction method is default method, the ESU always refers to the grant award notice prior to determining the appropriate use of program income.

### **8.**

#### **A. Cost Sharing or Matching**

For all Federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

- (1) Are verifiable from the non-Federal entity's records;
- (2) Are not included as contributions for any other Federal award;
- (3) Are necessary and reasonable for accomplishment of project or program objectives;
- (4) Are allowable under subpart E (Cost Principles) of this part;
- (5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
- (6) Are provided for in the approved budget when required by the Federal awarding agency; and
- (7) Conform to other provisions of this part; as applicable.

#### **B. Documentation of Personnel Expenses**

Records that reflect charges to Federal awards for salaries and wages will comply with the rules and requirements of 2 CFR 200.430.

### **9. Written Compensation Policies**

#### **A. Time and Effort Standards**

All employees who are paid in full or in part with federal funds must keep specific documents to demonstrate the amount of time they spent on grant activities. This includes an employee whose salary is paid with state or local funds but is used to meet a required "match" in a federal program. These documents, known as time and effort records, are maintained in order to charge the costs of personnel compensation to federal grants. Charges to federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

- (1) Be supported by a system of internal controls which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
- (2) Be incorporated into official records;

- (3) Reasonably reflect total activity for which the employee is compensated, not exceeding 100% of compensated activities;
- (4) Encompass both federally assisted and all other activities compensated by the ESU on an integrated basis;
- (5) Comply with the established accounting policies and practices of the ESU; and
- (6) Support the distribution of the employee's salary or wages among specific activities or costs objectives.

**B. Time and Effort Procedures**

Time and effort procedures will follow and comply with 2 CFR 200.430(i).

**C. Fringe Benefits**

Except as provided otherwise by federal law, the costs of fringe benefits will be allowable provided that the benefits are reasonable and required by law, a district-employee agreement, or another policy of the ESU.

**D. Leave**

The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if they are provided under established written ESU leave policies.

**E. Unexpected or Extraordinary Circumstances**

In the event of a pandemic or other unexpected or extraordinary circumstance, the ESU may close school or individual buildings. In such case, the ESU may compensate federally funded or other employees during such closure to ensure the return of staff to employment after the closure as allowed by state or federal law.

**F. Documentation for Personnel Expenses**

Records that reflect charges to federal awards for salaries and wages will comply with the rules and requirements of 2 CFR 200.430.

**10. Other Contract Matters.**

**A. Required Terms**

The non-Federal entity's contracts must contain the applicable provisions required by section 200.326 and described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

## **B. Contracting with Certain Vendors**

Pursuant to the standards contained in 2 C.F.R. § 200.321, the ESU will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible consistent with state law.

**Buy American.** The ESU participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A “domestic commodity or product” is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d).

The ESU may deviate from this general requirement only if:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

## **C. Record Keeping**

### **1. Record Retention**

a) The ESU maintains all records that fully show (1) the amount of funds under the grant or subgrant; (2) how the subgrantee uses those funds; (3) the total cost of each project; (4) the share of the total cost of each project provided from other sources; (5) other records to facilitate an effective audit; and (6) other records to show compliance with federal program requirements. 34 C.F.R. §§ 76.730-.731 and §§ 75.730-.731. The ESU also maintains records of significant project experiences and results. 34 C.F.R. § 75.732. These records and accounts must be retained and made available for programmatic or financial audit.

b) The U.S. Department of Education is authorized to recover any federal funds misspent within 5 years before

the receipt of a program determination letter. 34 C.F.R. § 81.31(c). Schedule 95 (Educational Service Units) and Schedule 24 (Local Agencies General Records) of the Nebraska Records Management Division as approved by the Nebraska Secretary of State/State Records Administrator requires the ESU to maintain records regarding federal awards for a minimum of six (6) years. Consequently, the ESU shall retain records for a minimum of six (6) years from the date on which the final Financial Status Report is submitted, unless otherwise notified in writing to extend the retention period by the awarding agency, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs. However, if any litigation, claim, or audit is started before the expiration of the record retention period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 C.F.R. § 200.333.

c) Records will be destroyed in compliance with Schedule 10, Schedule 24, and State law. This includes the completion of a Records Disposition Report.

## **2. Maintenance of Procurement Records**

a) The ESU must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

b) Retention of procurement records shall be in accordance with applicable law and Board policy.

## **D. Privacy**

The ESU has protections in place to ensure that the personal information of both students and employees is protected. These include the use of passwords that are changed on a regular basis; staff training on the requirements of the Family Educational Rights and Privacy Act (FERPA) and State confidentiality requirements; and training on identifying whether an individual requesting access to records has the right to the documentation.

Adopted on: June 21, 2021  
Revised on: June 19, 2023  
Reviewed on: January 15, 2024

**4005 & 4006**  
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**4007**  
**Review of Bills**

The administrator shall include all bills and claims in the board packet sent to the board in advance of the regularly scheduled meeting and shall review them with the entire board at the meeting.

Adopted on: June 21, 2021  
Revised on: \_\_\_\_\_  
Reviewed on: January 15, 2024

**4008**  
**Gifts, Grants, and Bequests**

In its sole discretion, the board may accept gifts, grants, bequests and other donations when doing so would benefit the ESU's mission and objectives. When the board accepts a gift, grant, bequest or other donation, it shall become the sole property of the ESU. The gift, grant, bequest or donation will be under the complete control of the board which will not have any obligation to replace it if it is destroyed or becomes obsolete.

Adopted on: June 21, 2021  
Revised on: \_\_\_\_\_  
Reviewed on: January 15, 2024

**4009  
Audit**

The board shall appoint a certified public accountant or public accounting firm to audit all ESU accounts annually and report to the board. The audit shall include all areas required by law and the rules of the Nebraska Department of Education. The auditor is not obligated to follow generally accepted accounting principles (GAAP) but shall conduct the audit according to the standards of the auditing profession.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4010  
Insurance**

The board shall purchase such insurance as it deems appropriate to protect the district, the board as a corporate body, individual board members, appointed officers, employees, and volunteers from financial loss arising from any claim, demand, suit or judgment. The district may, but is not required to, solicit bids or quotes for insurance coverage.

The board shall review its insurance coverage before its expiration date, or as need dictates.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4011, 4012, 4013  
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## **4014**

### **Use of ESU Property**

1. General Facilities Use Guidelines
  - a. ESU facilities may be used by various education and community organizations and individuals when it is in the interest of the general public.
  - b. ESU facilities may not be used for personal profit and other commercial purposes. The ESU opens its facilities to ESU patrons for the benefit of the public, not commercial uses. Due to the complications created by groups or individuals using ESU facilities for commercial purposes, these uses are prohibited. Booster clubs and other organizations raising money purely for the support of ESUs, schools, and student groups, as defined below, and not for personal profit are not considered commercial uses but must comply with the ESU's policies which apply to these groups.
  - c. Any person or group using ESU facilities must assure that it will be responsible for maintaining order, protecting property, and providing security and safety.
  - d. Only those organizations and persons who are known to ESU officials, who have financial resources sufficient to cover all rentals and possible damages, and who are willing to discharge such obligations shall be permitted to use the ESU facilities and equipment.
  - e. The rental fees for ESU facilities shall be set by the board.
  - f. Facility users that wish to use the facility must submit a facility use application which may be obtained from the ESU's central office. The application must be received by the administrator prior to the approval of any facility use.
  - g. Any person or group using the ESU facilities, for any purpose, must comply with all of the ESU's policies, rules, and regulations.
2. Use of Facilities

- a. The administrator may authorize the use of any ESU facilities for non-ESU activities.
- b. In addition to the guidelines listed elsewhere in this policy and other board policies or administrative protocol, the administrator will consider the following when making determinations regarding use of ESU facilities:
  - i. Entities that provide education-related programming and services for students or ESU staff may be given priority of use over other groups. The administrator has sole discretion in determining whether proposed uses relate sufficiently to the ESU's educational standards and programs.
  - ii. Entities that provide programming and services for community members and others living within the ESU's boundaries may be given priority of use over other groups.
- c. Denial of access
  - i. The administrator may limit or deny access to ESU buildings, grounds, and activities to any person whom the administrator deems to be using the facilities inappropriately and contrary to the ESU's mission.
  - ii. Upon determining that a person or group has engaged in, or is engaging in conduct that constitutes grounds for exclusion under this policy, the administrator shall take such action as he or she determines appropriate, including directing the person to cease engaging in the conduct or to leave the ESU premises or activity immediately. The administrator may request assistance from law enforcement authorities to remove an offending person from the ESU grounds. A person who enters ESU premises in violation of these conditions shall be deemed to be trespassing.
  - iii. The administrator shall have the authority to fix the time when, and the conditions under which, the offending person may return to ESU premises.

3. Entities and individuals may use or lease ESU equipment for non-ESU use only if they have received the prior permission of the administrator.
4. Proof of Insurance
  - a. Groups or individuals using ESU facilities, in addition to submitting the facility use application, may be asked to provide proof of insurance up to the current tort claims limits applicable to political subdivision in the State of Nebraska. Currently, those limits are \$1,000,000 per person for any number of claims arising out of a single occurrence and \$5,000,000 for all claims arising out of a single occurrence.
  - b. The ESU may require the group or individual to include the ESU as an additional insured on any such policies and may refuse access to its facilities until proof of satisfaction of this requirement is submitted to the administrator.
5. No Fees for Admission
  - a. Facility users may not charge a fee to participate in or be a spectator at any recreational activity, event, or other such gathering occurring on ESU grounds unless approved in advance by the administrator.
  - b. If the ESU retains control over the area of the premises in which the facility user desires to use, meaning the ESU provides supervision, staffing, custodial services, or otherwise maintains its control during the group's use of the facilities, the group may not charge a fee for admission under any circumstances.
  - c. Facility users may charge for parking or vehicle entry onto the premises unless otherwise prohibited by the administrator.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**Educational Service Unit No. 11  
Facility Use Application**

Applicant Name ("Applicant"): \_\_\_\_\_

Organization Name ("Organization"), if applicable: \_\_\_\_\_

Applicant's Position within Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Description of Requested Use: \_\_\_\_\_

\_\_\_\_\_

Is your organization a registered 501(c)(3) or other nonprofit?     Yes     No

Date of Requested Use: \_\_\_\_\_ Time of Requested Use: \_\_\_\_\_ to \_\_\_\_\_

Facility/Room Request, if preferred: \_\_\_\_\_

Expected Number of Attendees: \_\_\_\_\_

Check any of the following needs which apply to your request. Note that the ESU may deem additional services necessary and may require the Applicant/Organization to pay for such services as a condition of use:

- Custodial (set up, tear down, sanitation)
- Kitchen/Kitchen Staff (cooking, food service, clean up)
- Technology Assistance (sound, lighting, presentation)

Liability Insurance, check applicable:

- I/we have coverage of \$1 million per occurrence and \$5 million aggregate
- I/we have other coverage: \_\_\_\_\_
- I/we have no insurance coverage

Terms and Conditions of Use:

1. All users must comply with the ESU board's facility use and other policies, rules, and regulations. A copy of the board's facility use policy is available upon request.
2. The facilities are closed from 10 PM to 7 AM and may not be used during those hours.
3. The user(s) named above and the individual(s) signing on behalf of the User agree to defend, indemnify, and hold harmless the ESU, its employees and agents for any expense, cost, loss, damage, claim, judgment or claims bill incurred or rendered against same, including attorneys' fees and investigation expenses (pre-suit, suit, trial, appeal, and post appeal proceedings) on account of any intentional or negligent acts or omissions of the user or its employees, agents or servants, or any intentional or negligent acts or omissions of the ESU or its employees, agents or servants arising out of the use of any facility under this agreement.
4. All non-governmental users may be required to provide a certificate of insurance and/or name the ESU as an additional insured and provide documentation evidencing general liability coverage under an occurrence basis policy, with minimum limits of \$1,000,000.00 per occurrence and

\$5,000,000.00 aggregate, combined single limit covering bodily injury, property damage, personal injury, premises, operations, products, completed operations, independent contractors, and contractual liability. There shall be no exclusions for contracted liability. All governmental users shall provide evidence of insurance or self-insurance to the limits set forth in NEB. REV. STAT. § 13-926.

5. All users are subject to the fee schedule established by the ESU board, and all Applicants by signing below verify that they have authority to sign this application on behalf of the listed Organization, and all individuals and agents of organizations certify that they have financial means and authorization to pay for the required fees and deposits, if any.

Applicant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

***For ESU Use Only***

Application

Denied  
Approved, subject to the following

Insurance

User has provided sufficient proof of insurance.  
User must obtain proof of insurance and list ESU as additional insured.  
Insurance requirements are waived.

Additional Services Requested/Required

Custodial: \$ \_\_\_\_\_

**4015**  
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**4016**  
**Smoking**

Smoking, including the use of vapor products, alternative nicotine products, or any other such look-alike product, is permitted on ESU property only in specifically designated areas.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4017**  
**Press Releases**

Only individuals who have prior administrative approval may issue press releases regarding ESU-related activities and events. The administrator may delegate responsibility for communicating with the media to other staff on an ad hoc basis.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4018**  
**Denying Access to ESU Premises or Activities**

The ESU may provide access to the ESU's buildings, grounds, and activities to individuals who have legitimate reasons for being on ESU grounds. The administrator or designee (referred to herein as the "administrator") may limit or deny access to ESU buildings, grounds, and activities to any person who:

1. Disrupts the educational or work environment;
2. Repeatedly fails or refuses to comply with any visitor protocol;
3. Is unreasonably boisterous;

4. Engages in violence, force, coercion, threats, intimidation, or similar conduct;
5. Causes or attempts to cause damage to ESU property or to the property of any ESU employee or agent;
6. Causes or attempts to cause personal injury to any person on ESU grounds or at a ESU activity on or off ESU grounds;
7. Uses vulgar, profane, or demeaning language;
8. Uses fighting words; or
9. Poses a danger to the safety and well-being of students.

Upon determining that a person has engaged in, or is engaging in conduct that constitutes grounds for exclusion under this policy, the administrator shall take such action as he or she determines appropriate, including directing the person to cease engaging in the conduct or to leave the ESU premises or activity immediately. The administrator may request assistance from law enforcement authorities to remove an offending person from the ESU grounds.

The administrator shall have the authority to fix the time when, and the conditions under which, the offending person may return to ESU premises. A person who enters ESU premises in violation of these conditions shall be deemed to be trespassing. The administrator may summon law enforcement authorities to remove the person and request that criminal proceedings be initiated.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

## **4019**

### **Sale or Disposal of ESU Property**

When selling ESU property, whether real or personal, the board and administrator shall be mindful of its financial obligation to the taxpayers of the ESU. The board may sell ESU property in the manner it deems most appropriate for the particular property under the circumstances.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4020**  
**Copyright Compliance**

Copyrighted print, audio, video, software and other media may be reproduced only when the use of the reproduction is a fair use in compliance with the Copyright Act or when the written permission for such use by reproduction has been obtained from the copyright holder. Any staff member who violates this policy will face disciplinary action up to and including the cancellation, non-renewal, or termination of the employee's employment. Individuals who subject the ESU to financial penalty for copyright violations may be required to reimburse the ESU for its costs for such violation.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4021**  
**[INTENTIONALLY LEFT BLANK]**

**4022**  
**Volunteers**

Volunteers provide valuable assistance to ESU staff and enrich the ESU program. Community members are encouraged to volunteer their services to the ESU under the conditions set forth below.

1. Volunteers must provide the ESU with directory information including their name, address, and telephone number.
2. Upon request by the ESU, volunteers must promptly execute a Volunteer Services Agreement.
3. The ESU may, but is not required to, conduct a criminal background check on any volunteer. A potential volunteer who refuses to undergo a background check will not be permitted to volunteer for the ESU.



4. Volunteers shall not perform the duties of a teacher as that term is defined in Nebraska statutes or regulations.

5. Volunteers do not have any property right in or to a volunteer assignment. The ESU may deny or terminate a volunteer assignment for any reason that is not unconstitutional or unlawful. The administrator's decision shall be final.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

## **4023**

### **Record Management and Retention**

The ESU will comply with all federal record retention requirements, the Nebraska Records Management Act, and with Schedules 24 and 95 of the Nebraska Secretary of State's Records Management Division. These requirements apply to both physical and digital records. When permitted by Schedule 24 and Schedule 95 of the Nebraska Secretary of State's Office, records will be transferred to durable electronic media for long-term storage.

#### **Special Rules Related to Electronic Forms of Communication.**

Electronically stored information such as e-mail, instant messaging, and other electronic communication are important to the ESU's overall operation. E-mail and other forms of electronic communication which is subject to retention under the Nebraska Records Management Act may be moved to a storage method other than their original format. Each individual who creates or receives electronic communications that belong to or pertain to the operation of the ESU is responsible for determining whether and in what format those records must be maintained. Duplicate records may be destroyed at any time prior to the approved retention period. Staff members who are uncertain about whether a record should be retained should consult with their supervising administrator.

The ESU will archive all Google Apps data with metadata intact, except for instant messaging which users determine to be transitory. Only the domain administrator or other designated individual will be able to retrieve electronic

communication and other electronically stored information which has been vaulted.

**ESU-affiliated Social Media Posts.** Communication on ESU-affiliated social media accounts are considered short-term communications pursuant to the Records Management Act. As such, they will be retained in their original form on the vendor’s system and will not be deleted by the user for at least 6 months. Individuals who are uncertain as to whether a specific social media account is “ESU-affiliated” should refer to the Board’s policy on Staff and ESU Social Media Use contained elsewhere in these policies.

**Special Rules Related to Security Camera Footage.** Video footage from security cameras is generally considered working papers under the Records Management Act, and will be overwritten consistent with the ESU’s audio and video recording policy.

**Records Regarding Pending or Threatened Litigation.** When litigation against the ESU or its employees is filed or threatened, the ESU will take all reasonable action to preserve all documents and records that pertain to the issue. When the ESU is made aware of pending or threatened litigation, a litigation hold directive will be issued by the administrator or designee. The directive will be given to all persons suspected of having records that may pertain to the potential issues in the litigation. The litigation hold directive overrides any records retention schedule that may otherwise call for the disposition or destruction of the records until the litigation hold has been lifted.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4024**

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**4025**  
**Returned Checks**

Any individual or entity that writes a check to the ESU which is returned due to insufficient funds must reimburse the ESU in cash for the amount of the check plus a \$30.00 returned check charge. Individuals or entities whose checks are repeatedly returned due to insufficient funds may be prohibited from paying amounts due to the ESU via check.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4026**  
**Handbooks**

The ESU's handbooks for staff are intended to convey information and explain ESU regulations and procedures that are necessary for the ESU to run smoothly and efficiently. Although the board may take action to approve the handbooks annually, the administration has the authority to change the contents of any handbook so long as the changes are consistent with board policy.

None of the district's handbooks creates a "contract" between the ESU and staff members or other persons.

If any information contained in any handbook conflicts with board policy or state statute, the policy or statute will govern.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4027 – 4035**  
**[INTENTIONALLY BLANK]**

## 4036 Purchasing (Credit) Card Program

The board approves the use of a purchasing card (credit card) program for the purchase of goods and services for and on behalf of the ESU. The board will determine the type of purchasing card or cards to be used in the program and may contract with a third-party provider as provided by law.

**Authorized Purchases.** Authorized users have standing authority to use the purchasing card to charge actual, necessary, and reasonable travel expenses. Otherwise, the purchasing card may only be used to purchase goods and services approved by the board or the administrator or designee. The maximum amount that may be charged in a single day is \$3,100.

**Unauthorized Purchases.** In no event shall the purchasing card be used for personal purchases, purchases that are not ESU related, alcohol purchases, or purchases that are not allowed by law. Such unauthorized use shall result in discipline, up to and including the end of employment. Individuals who make unauthorized purchases shall reimburse the ESU for the expense within ten days of the purchase or the discovery of the unauthorized purchase, whichever occurs first.

**Authorized Users.** Individuals holding the following titles may be assigned an individual purchasing card: Administrator, Directors, Coordinators, and Media Center Employees. The board may take action at any meeting to authorize additional users or to revoke or suspend user privileges. Such action shall be recorded in the minutes. The ESU may also maintain a purchasing card in the name of the ESU. ESU employees may purchase ESU related goods and services with the ESU credit card only with authorization from the administrator.

**Documentation.** Employees seeking reimbursement for a purchasing card purchase must submit an itemized receipt ***and*** a purchasing card receipt to the ESU. The itemized receipt must include the name of the business, contact information, the date, a description of each item sufficient to give the board reasonable notice of the item purchased, and the price. ***A non-itemized credit card receipt alone is not sufficient.*** Designated ESU personnel must maintain the documentation for at least 7 years or as otherwise required by Schedule 24 – Local Agencies (General Records) maintained by the Nebraska Records Management Division. Employees must maintain copies of any documentation submitted to the ESU.

**Suspension or Termination of Privileges.** The board or the administrator (or his or her designee) (1) ***shall*** temporarily or permanently suspend the

purchasing card privileges of any individual that does not submit an itemized receipt for each purchasing card purchase, and (2) **may** temporarily or permanently suspend the purchasing card privileges of any individual for any other reason. The individual's purchasing card account must be immediately closed and he or she must return the purchasing card to the administrator or board. Purchases that are not accompanied by the required documentation shall be considered unauthorized, and the individual making the purchase must reimburse the ESU within 10 days of the purchase or the discovery of the non-itemized purchase, whichever occurs first.

**Reward Points or Rebates.** Any reward points, rebates, or other benefits received from the third-party purchasing card company are and will remain the property of the ESU.

**Purchase Review Procedures.** The administrator and business manager will conduct an independent review of credit card expenses on a monthly basis. Any unlawful or unauthorized expenditure or other discrepancy will be brought to the attention of the offending employee, if any, and the board. The administrator or his or her designee must provide the board at each regular meeting with the documentation submitted pursuant to this policy or a summary of that documentation with a description of each item sufficient to give the board reasonable notice of the items purchased, and review the same at each regular meeting. Any unlawful or unauthorized purchase must be addressed as provided in this policy or as otherwise allowed by law.

Adopted on: June 21, 2021

Revised on: June 19, 2023

Reviewed on: January 15, 2024

## **4037 Petty Cash**

The ESU office shall have a petty cash fund for the purchase of materials, supplies, services, or other ESU related goods and services in circumstances requiring immediate payment.

**Fund Custodians.** The individual holding the following employment position shall be the custodian of the petty cash fund and shall administer and be responsible for them: Business Manager.

Petty fund disbursements may only be made with the authorization of the petty cash fund custodian or the administrator.

**Documentation.** All petty cash fund disbursements are to be supported by an itemized receipt or other sufficient evidence that documents the expenditure. The itemized receipt or supporting documentation shall include the name of the business, contact information, the date, a description of each item sufficient to give the board reasonable notice of the item purchased, and the price. Designated ESU personnel shall maintain the documentation for at least 10 years or as otherwise required by Schedule 24 – Local Agencies (General Records) maintained by the Nebraska Records Management Division. Employees shall maintain copies of any documentation submitted to the ESU. Expenses will be assigned to the proper budget account.

**Unauthorized Purchases.** In no event shall the petty cash fund be used for personal purchases, purchases that are not ESU related, alcohol purchases, or purchases that are not allowed by law. Such unauthorized use shall result in discipline, up to and including the end of employment. Individuals who make unauthorized purchases shall reimburse the ESU for the expense within ten days of the purchase or the discovery of the unauthorized purchase, whichever occurs first.

**Purchase Review Procedures.** The administrator, or his or her designee, and the ESU treasurer shall conduct independent reviews of petty cash fund expenditures on a monthly basis. Any unlawful or unauthorized expenditure or other discrepancy shall be brought to the attention of the offending employee, if any, and the board. The administrator or his or her designee shall provide the board at each regular meeting with petty cash fund documentation that includes a description of each item sufficient to give the board reasonable notice of the items purchased. Any unlawful or unauthorized purchase shall be addressed as provided by board policy or as otherwise allowed by law.

**Year-End Review.** Each petty cash fund will be reviewed by the ESU treasurer at the end of the fiscal year.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

## 4038

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## 4039

### Threat Assessment and Response

The board is committed to providing a safe environment for members of the school community. Staff and others are urged to immediately report any statements or behavior that makes the observer fearful or uncomfortable about the safety of the ESU environment.

#### 1. Definitions

- a. A **threat** is an expression of a willful intent to physically or sexually harm someone or to damage property in a way that indicates that an individual poses a danger to the safety of ESU staff or other members of the ESU community.
  - i. The threat may be expressed/communicated behaviorally, orally, visually, in writing, electronically, or through any other means.
  - ii. A **transient threat** is an expression of anger or frustration that can be quickly or easily resolved.
  - iii. A **substantive threat** is an expression of serious intent to harm others which includes, but is not limited to, any threat which involves a detailed plan and means.
- b. A **threat assessment** is a fact-based process emphasizing an appraisal of observed (or reasonably-observable) behaviors to identify potentially dangerous or violent situations, to assess them and to manage/address them. Threat assessment is the process of identifying and responding to serious threats in a systematic, data-informed way.

#### 2. Obligation to Report Threatening Statements or Behaviors.

All staff and others must report **substantive threats** to a member of the administration immediately and comply with any other mandatory reporting obligations. Staff and others who are unsure whether a threat is substantive or transient should report the situation. Staff and others must make such report regardless of the nature of the relationship between the individual who initiated the threat or threatening behavior and the person(s) who were threatened or who were the focus of the threatening behavior. Staff and others must also make such reports regardless of where or when the threat was made or the threatening behavior occurred.

THREATS OR ASSAULTS WHICH REQUIRE IMMEDIATE INTERVENTION SHOULD BE REPORTED TO THE POLICE AT 911.

### **3. Threat Assessment Team**

The threat assessment team (team) shall consist of the ESU 11 Leadership Team. Not every team member need participate in every threat assessment.

The team is responsible for investigating all reported threats to ESU safety, evaluating the significance of each threat, and devising an appropriate response. The threat assessment team shall work closely with the crisis team in planning for crisis situations. The threat assessment team shall be familiar with mental health resources available to staff and others and shall collaborate with local mental health service providers as appropriate.

### **4. Threat Assessment Investigation and Response**

When a threat is reported, the ESU administrator shall initiate an initial inquiry/triage and, in consultation with members of the threat assessment team, make a determination of the seriousness of the threat as expeditiously as possible. The ESU administrator must contact law enforcement if the administrator believes that an individual poses a clear and immediate threat of serious violence.

If there is no reasonably apparent imminent threat present or once such an imminent threat is contained, the threat assessment team will meet to evaluate and respond to the threatening behavior. The team may, but is not required to, review the following types of information:

- Review of the threatening behavior and/or communication;



- Interviews with the individuals involved as necessary and/or appropriate;
- Review of school, ESU, and other records for any prior history or interventions with the individuals involved;
- Any other investigatory methods that the team determines to be reasonable and useful.

At the conclusion of the investigation, the team will determine what, if any, response to the threat is appropriate. The team is authorized to disclose the results of its investigation to law enforcement and to the target(s) of any threatened acts.

Regardless of threat assessment activities, disciplinary action and referral to law enforcement will occur consistent with board policy and Nebraska law.

## **5. Communication with the Public about Reported Threats**

The team will keep members of the ESU community appropriately informed about substantive threats and about the team's response to those threats. This communication may include oral announcements, written communication, or communication through print or broadcast media. However, the team will not reveal the identity of the individual of concern or of any target(s) of threatened violence unless permitted by law.

## **6. Coordination with the Crisis Team After Resolution of Threat**

The threat assessment team will confer with the district's crisis team after a threat has been investigated to provide the crisis team with information that the crisis team may use in assessing or revising the district's All-Hazard ESU Safety Plan.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

# **4040 ESU Safety and Security**

In order to fulfill its obligation to provide a safe and secure learning environment, the Board has adopted this ESU Safety and Security

Policy. Although the ESU will take reasonable steps to protect staff and others, no entity can provide complete safety and security at all times. This policy does not make the ESU a guarantor of the safety of students, staff, or patrons.

## **I. General Safety and Security**

### **a. NDE Rubric**

The ESU will meet at least the minimum requirement for each school safety and security standard indicator adopted by the Nebraska Department of Education.

### **b. School Hours**

During a crisis situation, the administration will maintain established ESU and program hours as scheduled whenever possible.

### **c. Access to ESU and Program Facilities**

- i. The ESU's facilities may not be used for funeral or memorial services during business or program hours.
- ii. This policy does not discourage the presentation of traditional American Legion memorial services which promote patriotism.

### **d. Memorials**

- i. Memorials often create a visual reminder of a particular crisis that may reintroduce feelings of grief. Therefore, memorials are generally not allowed anywhere on ESU and program premises.
- ii. Individuals who wish to seek a waiver of the general prohibition against memorials must follow the steps outlined below:
  - a. The individual must first meet with the Administrator or his/her designee to discuss the request for a memorial.

- b. If the Administrator determines that additional review is appropriate, he/she will refer the request for consideration by the crisis team.
- c. The crisis team will consider:
  - i. The current research regarding the potential psychological harm that could be caused by a memorial;
  - ii. The potential disruption to the ESU's or program's learning environment;
  - iii. The cost to the ESU of erecting and/or maintaining a memorial;
  - iv. Whether prior tragedies have been commemorated by a memorial;
  - v. The potential for future tragedies which could necessitate a similar memorial; and
  - vi. Any other factor which the crisis team deems relevant to its recommendation.
- d. After consideration of the factors outlined above, the crisis team will make a recommendation as to whether the prohibition against memorials should be waived.
- e. The administrator will communicate the crisis team's recommendation to the individual requesting the memorial.
- f. If the crisis team recommends waiver of the prohibition against memorials, the individual who made the initial request must inform the administrator if he/she wishes to ask the board to approve the memorial.
- g. Memorials may only be approved by the board and only after completion of the process outlined in this policy.

- iii. This policy is not intended to discourage the acceptance of memorial funds or specific items.

## **II. Administrator's Duties Related to Safety and Security**

### **a. Appointment of Crisis Team**

The administrator shall appoint members to serve on the ESU's crisis team. The administrator may, but is not required, to include representatives from the following groups on the crisis team:

- Administrators
- Teachers
- Health/mental health
- Facilities staff
- Transportation staff
- Food service staff member
- Information technology staff
- Staff member with expertise on the needs of students with disabilities
- Organizations that serve the disabled
- Organizations that serve the needs of minority populations (ELL, race, etc.)
- Representatives from local early responders (law enforcement, fire and rescue personnel, railroad, factories, etc.)

### **b. Compliance with Fire and Safety Codes**

The Administrator will ensure that the ESU meets all current fire and life safety codes or is in the process of coming into compliance.

### **c. Annual Safety Audits**

The Administrator will arrange for the performance of an annual safety audits using an external consultants utilizing the standardized audit protocol adopted by the Nebraska Department of Education.

### **d. Mutual Aid Agreements**

The Administrator will enter into mutual aid agreements to address the academic, physical, operational, psychological, and emotional recovery areas when possible with appropriate local entities.

### **III. Building/Program Administrators' Duties Related to Safety and Security**

#### **a. Positive and Safe Learning Environment**

The ESU Administrator shall implement a ESU-wide behavior process to create a positive and safe environment.

The ESU Administrator shall ensure that staff complete any required suicide prevention training as required by board policy.

#### **b. Visitor Protocol.**

The ESU Administrator shall adopt a protocol for visitors to his/her building or program to sign in upon arrival and departure and to be identified as a visitor while they are in the building during the business or program day. The protocol must also address visitors in specialized areas of the ESU.

This protocol may be written or unwritten but must be clearly communicated to and enforced by all staff.

The ESU Administrator will report individuals who repeatedly violate the visitor protocol to the administrator for possible exclusion from ESU facilities pursuant to board policy.

#### **c. Emergency Drills**

The ESU will conduct any drills recommended by the crisis team.

The ESU Administrator shall conduct a performance review of each of the drills conducted pursuant to this policy. This review does not have to be in writing.

Adopted on: June 21, 2021  
Revised on: \_\_\_\_\_  
Reviewed on: January 15, 2024

## **4041 Crisis Team Duties**

The crisis team is responsible for planning for the safety and security of the ESU, staff, and others. The teams will respond to and manage any safety or security incident that occurs in the ESU or program setting or which has the potential to disrupt the orderly operation of the ESU system.

### **1. Membership on and Chair of Team**

The administrator will appoint members to serve on the crisis team.

If the administrator does not serve on the crisis team personally, he/she shall appoint an individual to serve as the chair of the crisis team. The chair of the crisis team shall have the responsibility of scheduling crisis team meetings, documenting crisis team actions, and reporting to the board at least annually on the district's All-Hazard ESU Safety Plan and other activities of the crisis team.

### **2. Meetings of the Crisis Team**

The crisis team will meet at least annually. At these meetings, the team will coordinate with local agencies as appropriate to prepare for and communicate about a variety of real world scenarios.

The crisis team will meet at such additional times as necessary to fulfill the duties given to it pursuant to this policy.

### **3. ESU Self-Assessment**

The crisis team shall conduct a self-assessment and report the results of this self-assessment to the administrator and to the board.

### **4. All-Hazard ESU Safety Plan**

The crisis team will create an All-Hazard ESU Safety Plan. The plan must be customized to the needs of each of the ESU's buildings and programs. The crisis team will consider all of the components required by the School Safety

and Security Standards for schools that have been adopted by the Nebraska Department of Education and amend and adopt them as appropriate for the ESU.

The crisis team may share a copy of the All-Hazard ESU Safety Plan with local authorities and first responders.

#### **5. Standard Response Protocol (SRP)**

The crisis team should be knowledgeable about the Standard Response Protocol promoted by the "I love u guys" Foundation.

#### **6. Consultation with the Administrator**

The crisis team shall confer with the Administrator to ensure that visible signage is present in each building which meets the needs of local emergency responders.

#### **7. Consultation with Threat Assessment Team**

The crisis team will consult with members of the threat assessment team to determine if the All-Hazard ESU Safety Plan has been appropriately implemented and if it should be modified or updated.

#### **8. Review of Training**

The crisis team shall review the training which the ESU provides for specified employees in required areas to comply with local, state, and federal regulations.

The crisis team shall also review any non-required training which could be provided to appropriate staff to increase the safety and security of the ESU and its staff and others. If the team believes such non-required training would be beneficial, it shall recommend to the administrator that the training be provided to the identified staff member at ESU expense.

#### **9. Communication with ESU Community and Stakeholders**

The crisis team will work to improve communication with the ESU community and relevant stakeholders. This communication may include, but not be limited to, the communication strategies and protocols identified in the All-Hazard ESU Safety Plan.

## **10. Communication with the Board**

The crisis team will report to the board at least annually on its activities. This report may be included as part of the administrator's report at a regular board meeting.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4042 & 4043**  
**[INTENTIONALLY LEFT BLANK]**

### **4044**

#### **Incidental or De Minimis Use of Public Resources**

The board prohibits its members and employees from using public resources for personal or political purposes as prohibited in the Nebraska Political Accountability and Disclosure Act ("Act"). However, the board recognizes that incidental or de minimis uses of public resources are sometimes necessary and within reason. The purpose of this policy is to comply with the Act and to authorize certain uses of public resources as permitted by the Act.

The following uses of public resources are permitted as incidental or de minimis:

- Limited communications with family members or other non-ESU employees for personal purposes, such as e-mails or text messages with a spouse using ESU hardware, software, internet, accounts, or other public resources so long as this communication does not distract from or interfere with employees performing their official duties, with interference determined in the sole and unfettered discretion of an employee's supervising administrator;
- Traveling to or from the person's home when the primary purpose serves the interests of the ESU. If an employee is unsure whether the primary purpose serves the interests of the ESU, the employee should obtain the approval of his or her supervising administrator, who is authorized to make that determination under this policy;



- Making a limited number of copies of personal documents when the person cannot make alternative arrangements;
- Using personal social media accounts or accessing appropriate websites which are consistent with the ESU’s digital citizenship curriculum while off duty;
- Using ESU-owned computer programs, such as Word, Excel, Adobe, and others for personal purposes while off duty;
- Any other uses contained in the collective bargaining agreement or individual contract of the employee;
- Other uses by employees authorized by the administrator or administrator’s designee. The board intends to allow the administrator to authorize such uses on a case-by-case basis to the maximum extent permitted by the Act; and
- Other uses by the administrator or board members authorized by the board president. The board intends to allow the board president to authorize such uses on a case-by-case basis to the maximum extent permitted by the Act.

All uses pursuant to this policy must be (1) consistent with other ESU policies, (2) consistent with the provisions of Title 92, Nebraska Administrative Code, Chapter 27 (Nebraska Department of Education “Rule 27”), and (3) reported as compensation in accordance with the Internal Revenue Code of 1986, as amended, and taxes, if any, are paid. It is the responsibility of each board member or employee to account for their own tax liability, and the ESU will not indemnify or account for any personal use of public resources by the board member or employee.

All of the provisions of Rule 27 will apply to non-certificated staff for the purposes of this policy. In addition, employees may not use the ESU’s internet, computers, or other technology to access obscene or pornographic material, sext, or engage in any illegal activities.

Adopted on: June 21, 2021  
Revised on: \_\_\_\_\_  
Reviewed on: January 15, 2024

## **4046 Service Animals**

Animals are not allowed in ESU buildings or on ESU property without the written permission of the administrator except as provided in this policy.

The ESU does not permit discrimination against individuals with disabilities, including those who require the assistance of a service animal. An individual with a disability is permitted to be accompanied by his/her service animal on ESU property when required by law, subject to the conditions of this policy.

**Service Animal.** A "service animal" is a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Work or tasks **do not** include the crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship. The work or tasks performed by a service animal must be directly related to the handler's disability or necessary to mitigate a disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. **See also**, Miniature Horses below.

**ESU Inquiries.** ESU officials **may** ask the owner or handler of an animal whether the animal is required because of a disability and what work or task the animal has been trained to do **unless** the answers to these inquiries are readily apparent. ESU officials **may not** ask about the nature or extent of a person's disability and may not require documentary proof of certification or licensing as a service animal.

**Procedural Requirements.** The following requirements must be satisfied **before** a service animal will be allowed in ESU buildings or on ESU grounds:

**Request.** A person who wants to be accompanied by his/her service animal must submit a written request form to the administrator. The request form is attached to this policy. These requests must be renewed each school/ESU year or whenever a different service animal will be used.

**Health and Vaccination.** The service animal must be in good health and immunized against diseases common to that type of animal. The owner or handler of the animal must submit proof of current licensure

from the local licensing authority and proof of the service animal's current vaccinations and immunizations from a licensed veterinarian.

Service animals will not be allowed in ESU buildings or other ESU property until the ESU has approved the request.

**Control.** A service animal must be under the control of its handler at all times. The service animal must have a harness, backpack, vest identifying the dog as a trained service dog, leash, or other tether. If the handler is unable to use a harness, backpack, vest, leash, or other tether, because of a disability or the use of a harness, backpack, vest, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, the use of these items is not required. However, the service animal must be otherwise under the handler's control.

**Exclusion or Removal from ESU.** A service animal may be excluded from ESU property and buildings if an ESU administrator determines that:

- (1) A handler does not have control of the service animal;
- (2) The service animal is not housebroken;
- (3) The service animal presents a direct and immediate threat to others in the ESU; or
- (4) The animal's presence fundamentally alters the nature of the service, program, or activity.

The handler or a minor's parent or guardian shall be required to remove the service animal from ESU premises immediately upon such a determination. If the service animal is removed, the individual with a disability shall be provided with the opportunity to participate in the service, program, or activity without the service animal.

**Allergic Reactions.** If any ESU employee assigned to a building or mode of transportation in which a service animal is permitted suffers an allergic reaction to the service animal, the person having custody and control of the animal will be required to remove the animal to a different location designated by an administrator. The ESU will arrange a meeting between ESU personnel, the individual with the disability, and the parents or guardian(s) of any minor with the disability to develop an alternate plan.

**Supervision and Care of Service Animals.** The owner or handler of a service animal is solely responsible for the supervision and care of the

animal, including any feeding, exercising, and clean up while the animal is in an ESU building or on ESU property. A minor's parent or guardian is responsible for providing for the supervision and the care of the animal in the event that his or her child is not able to do so. The ESU is not responsible for providing any care, supervision, or assistance for a service animal.

**Extra Charges.** The owner or handler of a service animal will not be required to pay an admission fee or a charge for the animal to attend events for which a fee is charged.

**Damage to ESU Property and Injuries.** The owner or handler of a service animal is solely responsible and liable for any damage to ESU property or injury to personnel or others caused by the animal.

**Miniature Horses.** Requests to permit the use of a miniature horse by an individual with a disability will be addressed on a case-by-case basis by considering the following factors:

- (1) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
- (2) Whether the handler has sufficient control of the miniature horse;
- (3) Whether the miniature horse is housebroken; and
- (4) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

All additional requirements outlined in this policy, which apply to service animals, shall apply to miniature horses.

**Service Animal in Training.** This policy shall also be applicable to service animals in training that are accompanied by a bona fide trainer.

**Denial of Access and Grievance.** If an ESU official denies a request for access of a service animal, the disabled individual or a minor's parent or guardian can file a written grievance with the ESU's Section 504 Coordinator.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

## SERVICE ANIMAL REQUEST FORM

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Date

Building

Name of Assisted Person: \_\_\_\_\_

Assisted person is  Staff  Student  Other

Name of Animal Owner (if different than above): \_\_\_\_\_

Name of Animal Handler (if different than above): \_\_\_\_\_

Name of Animal: \_\_\_\_\_ Type of Animal:  Dog  Miniature Horse

*If it is not readily apparent that the animal qualifies as a "service animal," please answer the following questions:*

Is use of the animal required because of a disability?  Yes  No

What work or task has the service animal been trained to perform?

---

I have read and understand the ESU's Animals Policy. I will abide by the terms of that Policy. I understand that if the service animal is out of control, not housebroken, presents a direct and immediate threat to others in the ESU, or fundamentally alters the nature of the service, program, or activity that cannot be eliminated by reasonable modifications, the ESU may exclude or remove my service animal from its property.

I agree to be responsible for any damage to ESU property or injury to personnel, students, or others caused by the animal. I agree to indemnify, defend, and hold harmless the ESU from and against any and all claims, actions, suits, judgments, and demands brought by any party arising on account of, or in connection with, any activity of or damage caused by my service animal.

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Owner Signature

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Date

---

Parent/Guardian Signature

---

Date

---

Assisted Person's Signature

---

Date

---

Handler Signature

---

Date

**Please attach the following documentation:**

- **Proof of current licensure**
- **Proof of current vaccinations and immunizations from a licensed veterinarian**

**APPROVAL**

---

ESU Official Signature

---

Date

Title: \_\_\_\_\_

**Note:** This form is valid until the end of the current school year. It must be renewed prior to the start of each subsequent school year or whenever a different service animal will be used.

## **4047**

### **Data Breach Response**

#### **I. Preparation**

A data breach is an instance in which personal information as defined by state law or personally identifiable information as defined by federal law is released or accessed in an unauthorized manner. In order to ensure compliance with state and federal law, the following preparatory steps shall be taken in the event of a breach.

##### **A. Data Governance**

The administrator, or designee, will create an annually updated data directory that will include:

1. Computing devices purchased by the ESU,
2. Software that is installed on ESU devices,
3. Staff members with access to ESU devices,
4. Staff members with active usernames and passwords for any ESU software.

##### **B. New Devices and Software**

Any new software or device that is used in an ESU building for ESU purposes will be submitted to the administrator or designee for inclusion in the directory.

#### **II. Incident Response Plan**

##### **A. Assessment and Investigation**

1. If the ESU becomes aware of a data breach it will make every reasonable effort to remedy the cause of the breach as soon as possible.
2. The ESU will conduct a good faith, reasonable, and prompt investigation to determine the likelihood that personal information has been or will be used for an unauthorized purpose.

3. This investigation will include, but not be limited to, an assessment of what software, hardware, and physical documents were accessed; which ESU personnel had access to the compromised data; and what specific data was compromised.

**B. Notification of Effected Individuals**

1. If the investigation determines that the use of information about a Nebraska resident for an unauthorized purpose has occurred or is reasonably likely to occur, the ESU shall give notice to the affected Nebraska resident.
2. Notice shall be made as soon as possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

**C. Notification of Law Enforcement and Outside Organizations**

1. Should notice of the breach be required to any individual, notice of the breach will be simultaneously sent to the Nebraska Attorney General's office.
2. The Administrator will determine if the Family Policy Compliance Office will be notified of the breach.
3. The Administrator will determine if the Privacy Technical Assistance Center will be notified of the breach.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

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## **4048 Communicable Disease**

The ESU strives to provide a safe environment for and staff and others while safeguarding the rights of all employees and others, including those with communicable diseases.

**Communicable Diseases.** Communicable diseases are defined by the Nebraska Department of Health and Human Services in Title 173 Nebraska Administrative Code Chapter 1 and include HIV/AIDS, Hepatitis (A, B, and E), Measles, Mumps, and Tuberculosis.

**Program Attendance and Participation in ESU Sponsored Activities.** Generally, individuals with a communicable disease will be restricted only to the extent necessary to prevent the transmission of the disease, to protect their health and rights of privacy, and to protect the health and safety of others.

**Infection and Exposure Control Procedures/Universal Precautions.** The ESU will monitor the information available through the Federal Centers for Disease Control, the Nebraska Department of Health and Human Services, and the Occupational Safety and Health Administration. This policy and any procedures, universal precautions, or exposure control plan will be modified, if appropriate, based upon the best new medical information provided by the above sources.

The administrator will take appropriate measures if there is an epidemic or outbreak of a communicable disease which may include, but it's not limited to, the emergency exclusion or alternative placement of employees or others or the closure of an ESU building or program or the entire ESU.

**Confidentiality.** The existence of an individual's communicable disease shall be treated as confidential and will be limited to ESU staff on a "need-to-know" basis. If it is necessary to inform a person of another's condition (due to exposure, for instance), the person will be notified of the confidentiality of that disclosure.

**Staff Training.** Staff will receive training regarding communicable diseases and the requirements of this policy and any adopted procedures as part of the training received under the Workplace Injury Prevention and Safety Committee policy.

**Reporting.** ESU staff who learn that an individual has a communicable disease will report it to the proper authority as required by Title 173 Nebraska Administrative Code Chapter 1

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Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

## **4049**

### **Drones and Unmanned Aircraft**

Drones, Unmanned Aircraft Systems, and any other such vehicles ("drones"), which are not operated for purposes of ESU programs or activities, may not be operated on or above ESU property without the prior written permission of the administrator or designee. Any authorized use of drones must comply with all state and federal regulations governing the operation of drones, including FAA regulations.

Drones owned by the ESU or operated on or above ESU property with permission must be operated:

1. In compliance with this policy and all other ESU policies;
2. Only outside the ESU building(s) in the area authorized or designated by the administrator or designee;
3. Under the direct supervision of an individual fully trained and skilled in the system's operation;
4. By an individual with the requisite skill and training to safely operate the drone; and
5. Consistent with any other limitations imposed by the administrator or designee.

Any monitoring or recording of picture, video, or audio by a drone must have the prior written permission of the administrator or designee and comply with all board policies governing recordings, data, and records.

Any unauthorized use of a drone is strictly prohibited. Devices used in a manner that does not comply with this policy or applicable state and federal law may be confiscated and the operator may be subject to discipline, civil liability, or criminal liability.

Adopted on: June 21, 2021

Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

**4050, 4051, 4052**  
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**4053**  
**Nondiscrimination**

The ESU does not discriminate on the basis of prohibited factors in employment and educational programs/activities. The ESU affirmatively strives to provide equal opportunity for all as required by:

Title VI of the Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, religion, or national origin

Title VII of the Civil Rights Act of 1964 as amended - prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin

Title IX of the Education Amendments of 1972 - prohibits discrimination on the basis of sex

Age Discrimination in Employment Act of 1967 (ADEA) as amended - prohibits discrimination on the basis of age with respect to individuals who are at least 40

The Equal Pay Act of 1963 as amended - prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment

Section 504 of the Rehabilitation Act of 1973 - prohibits discrimination against the disabled

Americans with Disabilities Act of 1990 (ADA) - prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications

The Family and Medical Leave Act of 1993 (FMLA) - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons

The Pregnancy Discrimination Act of 1978 - prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions

The Uniformed Services Employment and Reemployment Rights Act (USERRA) – provides job protections and reemployment rights to military reservists and National Guard members called to active duty

The Boy Scouts of America Equal Access Act which prohibits discrimination against groups that wish to access district facilities

The Nebraska Fair Employment Practice Act (FEPA) – prohibits employment discrimination on the basis of race, color, national origin, religion, sex (including pregnancy), disability, marital status, and retaliation

Nebraska Age Discrimination in Employment Act (Age Act) – prohibits employment discrimination on the basis of age for those individuals who are over 40 years of age

The Equal Pay Act of Nebraska – prohibits discriminatory wage practices based on sex

The Nebraska Equal Opportunity in Education Act – prohibits discrimination on the basis of sex (including pregnancy) by any educational institution

Veterans Preference Law (NEB. REV. STAT §§ 48-225 to 48-231) - stipulates categorical preferences for employment for military veterans and for the spouses of disabled veterans

Additional board policies prohibit harassment and/or discrimination against students, employees, or patrons on the basis of sex, race, color, ethnic or national origin, religion, marital status, disability, age, pregnancy, and any

other legally prohibited basis. Retaliation for engaging in a protected activity is also prohibited.

Any person who believes she or he has been discriminated against, denied a benefit, or excluded from participation in any district education program or activity may file a complaint using the ESU's complaint procedures.

Inquiries regarding compliance with any of the laws referred to in this policy may be directed to the administrator or to the ESU's Title IX and/or Section 504/ADA Coordinator.

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Revised on: \_\_\_\_\_

Reviewed on: January 15, 2024

### **NOTICE OF NON-DISCRIMINATION**

ESU No. 11 does not discriminate on the basis of race, color, national origin, sex, marital status, disability, or age or in admission or access to, or treatment of employment or educational programs and activities.

The following person has been designated to handle inquiries regarding ESU 11's non-discrimination policies: ESU 11 Administrator who may be contacted in writing at PO Box 858, Holdrege, Nebraska, 68949, by e-mail or by telephone at (308) 995-6585.

Any person may also contact the Office for Civil Rights, U.S. Department of Education, by email at [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov); by telephone at (816) 268-0550; or by fax at (816) 268-0599, regarding compliance with the regulations implementing Title VI, Title IX, Section 504, or any other applicable laws.

**4054, 4055, 4056**  
**[INTENTIONALLY LEFT BLANK]**

**4057**  
**Title IX Policy**

It is the policy of the ESU that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any of the ESU's programs or activities. The ESU is required by Title IX (20 U.S.C. § 1681) and 34 C.F.R. part 106 to not discriminate in such a manner.

**1. Title IX Coordinator**

1.1. **Designation.** The ESU will designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this policy, who will be referred to as the "**Title IX Coordinator.**" The ESU will notify applicants for admission and employment, students, parents or legal guardians of students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the ESU, of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment). This report may be made by any means, including but not limited to, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours).

**2. Definitions.** As used in this policy, the following terms are defined as follows:

2.1. **Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to any ESU employee. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only ESU employee with actual knowledge is the respondent (as that term is defined below). "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in subsection 1.1 above.

2.2. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

2.3. **Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the ESU investigate the allegation of sexual harassment. The only ESU official who is authorized to initiate the Grievance Process for Formal Complaints of Sexual Harassment against a respondent is the Title IX Coordinator (by signing a formal complaint). At the time of filing a formal complaint with the ESU, a complainant must be participating in or attempting to participate in the ESU's education program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under subsection 1.1 above, and by any additional method designated by the ESU. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the ESU) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this policy or under 34 C.F.R. part 106, and will comply with the requirements of this policy and 34 C.F.R. part 106, including subsections 5.1.3–5.1.4 and 34 C.F.R. § 106.45(b)(1)(iii).

2.4. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

2.5. **Consent** for purposes of this policy means the willingness in fact for conduct to occur. An individual may, as a result of age, incapacity, disability, lack of information, or other circumstances be incapable of providing consent to some or all sexual conduct or activity. Neither verbal nor physical resistance is required to establish that an individual did not consent. ESU officials will consider the totality of the circumstances in determining whether there was consent for any specific conduct. Consent may be revoked or withdrawn at any time.

2.6. **Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

2.6.1. An employee of the ESU conditioning the provision of an aid, benefit, or service of the ESU on an individual's participation in unwelcome sexual conduct;

2.6.2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the ESU's education program or activity;

2.6.3. **Sexual assault**, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), which means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

2.6.4. **Dating violence**, as defined in 34 U.S.C. § 12291(a), which means violence committed by a person—

2.6.4.1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and

2.6.4.2. where the existence of such a relationship shall be determined based on a consideration of the following factors:

2.6.4.2.1. The length of the relationship.

2.6.4.2.2. The type of relationship.

2.6.4.2.3. The frequency of interaction between the persons involved in the relationship.

2.6.5. **Domestic violence**, as defined in 34 U.S.C. § 12291(a), which includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim, services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or



maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior by a person who -

2.6.5.1. is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim

2.6.5.2. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner

2.6.5.3. shares a child in common with the victim; or

2.6.5.4. commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

2.6.6. **Stalking**, as defined in 34 U.S.C. § 12291(a), which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

2.6.6.1. fear for his or her safety or the safety of others; or

2.6.6.2. suffer substantial emotional distress.

2.7. **Supportive measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the ESU's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the ESU's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The ESU will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the ESU to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

### **3. Discrimination Not Involving Sexual Harassment.**

3.1. **General Prohibition.** Except as provided elsewhere in Title IX, 34 C.F.R. part 106, or this policy, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by the ESU.

3.2. **Specific Prohibitions.** Except as provided elsewhere in Title IX, 34 C.F.R. part 106, or this policy, in providing any aid, benefit, or service to a student, the ESU will not on the basis of sex:

3.2.1. Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

3.2.2. Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

3.2.3. Deny any person any such aid, benefit, or service;

3.2.4. Subject any person to separate or different rules of behavior, sanctions, or other treatment;

3.2.5. Apply any rule concerning the domicile or residence of a student or applicant;

3.2.6. Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

3.2.7. Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

3.3. **Complaint Procedure.** All complaints regarding any alleged discrimination on the basis of sex, including without limitation violations of this policy, 34 C.F.R. part 106, Title IX, Title VII, or other state or federal law—when the alleged discrimination does not arise from or relate to an allegation of sexual harassment as defined in

subsection 2.6 above—shall be addressed pursuant to the ESU’s general complaint procedure, Board Policy 2006

#### **4. Response to Sexual Harassment**

**4.1. Reporting Sexual Harassment.** Any person who witnesses an act of unlawful sexual harassment is encouraged to report it to the ESU’s Title IX Coordinator. No person will be retaliated against based on any report of suspected sexual harassment or retaliation. Any ESU employee who receives a report of sexual harassment or has actual knowledge of sexual harassment must convey that information to the Title IX Coordinator as soon as reasonably practicable, but in no case later than the end of the following school/business day.

**4.2. General Response to Sexual Harassment.** When the ESU has actual knowledge of sexual harassment in its education program or activity against a person in the United States, the ESU will respond promptly in a manner that is not deliberately indifferent. The ESU will be deemed to be deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. For the purposes of this policy “education program or activity” includes locations, events, or circumstances over which the ESU exercised substantial control over both the respondent and the context in which the sexual harassment occurs. The ESU’s response will treat complainants and respondents equitably by offering supportive measures as defined in subsection 2.7 above to a complainant, and by following the grievance process described in section 5 below before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. The Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

**4.3. Emergency Removal.** Nothing in this policy precludes the ESU from removing a respondent from the ESU’s education program or activity on an emergency basis, provided that the ESU undertakes an individualized safety and risk analysis, and determines that an immediate threat to the physical health or safety of any student or

other individual arising from the allegations of sexual harassment justifies removal. In the event that the ESU so removes a respondent on an emergency basis, then the ESU will provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

4.4. **Administrative Leave.** Nothing in this policy precludes the ESU from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with section 5 below. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

4.5. **General Response Not Conditioned on Formal Complaint.** With or without a formal complaint, the ESU will comply with the obligations and procedures described in this section 4.

## 5. **Grievance Process for Formal Complaints of Sexual Harassment.**

### 5.1. **General Requirements.**

5.1.1. **Equitable Treatment.** The ESU will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following the grievance process described in this section 5 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies will be designed to restore or preserve equal access to the ESU's education program or activity. Remedies may include the same individualized services described in subsection 2.7 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

5.1.2. **Objective Evaluation.** This grievance process requires an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence. Credibility determinations

may not be based on a person's status as a complainant, respondent, or witness.

5.1.3. **Absence of Conflicts of Interest or Bias.** The ESU will require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

5.1.4. **Training.** The ESU will ensure that all individuals or entities described in this Training section 5.1.4 receive training as provided below. Any materials used to train these individuals will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

5.1.4.1. **All ESU Employees and Board Members.** All ESU employees and board members will be trained on how to identify and report sexual harassment.

5.1.4.2. **Title IX Coordinators, Investigators, Decision-Makers, or Informal Resolution Facilitators.** The ESU will ensure that Title IX Coordinators, investigators, decision-makers, or any person designated by the ESU to facilitate an informal resolution process receive training on:

5.1.4.2.1. The definition of sexual harassment in subsection 2.6;

5.1.4.2.2. The scope of the ESU's education program or activity;

5.1.4.2.3. How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable; and

5.1.4.2.4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

5.1.4.3. **Decision-Makers.** The ESU will ensure that decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in subsection 5.6.

5.1.4.4. **Investigators.** The ESU will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in subsection 5.5.8.

5.1.5. **Presumption.** It is presumed that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

5.1.6. **Reasonably Prompt Time Frames.** This grievance process shall include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the ESU offers informal resolution processes. The process shall also allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

5.1.7. **Range of Possible Sanctions and Remedies.** Following a determination of responsibility, the ESU may impose disciplinary sanctions and remedies in conformance with this and the ESU's student discipline policy, and other state and federal laws. Depending upon the circumstances, these policies provide for disciplinary sanctions and remedies up to and including expulsion.

5.1.8. **Range of Supportive Measures.** The range of supportive measures available to complainants and respondents include those listed in subsection 2.7.

5.1.9. **Respect for Privileged Information.** The ESU will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

## 5.2. **Notice of Allegations.**

5.2.1. **Initial Notice.** Upon receipt of a formal complaint, the ESU will provide the following written notice to the parties who are known:

5.2.1.1. A copy of this policy.

5.2.1.2. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in subsection 2.6, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under subsection 5.5.5, and may inspect and review evidence under subsection 5.5.5. The written notice will inform the parties of any provision in the ESU's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

5.2.2. **Supplemental Notice.** If, in the course of an investigation, the ESU decides to investigate allegations about the complainant or respondent that are not included in the Initial Notice described above, the ESU will provide notice of the additional allegations to the parties whose identities are known.

### 5.3. **Dismissal of Formal Complaint.**

5.3.1. The ESU will investigate the allegations in a formal complaint.

5.3.2. **Mandatory Dismissals.** The ESU **must** dismiss a formal complaint if the conduct alleged in the formal complaint:

5.3.2.1. Would not constitute sexual harassment as defined in subsection 2.6 even if proved;

5.3.2.2. Did not occur in the ESU's education program or activity;  
or

5.3.2.3. Did not occur against a person in the United States.

5.3.3. **Discretionary Dismissals.** The ESU **may** dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

5.3.3.1. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

5.3.3.2. The respondent is no longer enrolled in or employed by the ESU; or

5.3.3.3. Specific circumstances prevent the ESU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

5.3.4. Upon a dismissal required or permitted pursuant to subsections 5.3.2 or 5.3.3 above, the ESU will promptly send written notice of the dismissal and an explanation of that action simultaneously to the parties.

5.3.5. Dismissal of a formal complaint under this policy does not preclude the ESU from taking action under another provision of the ESU's code of conduct or pursuant to another ESU policy.

5.4. **Consolidation of Formal Complaints.** The ESU may consolidate formal complaints as to allegations of sexual harassment



against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this policy to the singular "party," "complainant," or "respondent" include the plural, as applicable.

**5.5. Investigation of Formal Complaint.** When investigating a formal complaint and throughout the grievance process, the ESU will:

5.5.1. Designate and authorize one or more persons (which need not be ESU employees) as investigator(s) to conduct the ESU's investigation of a formal complaint;

5.5.2. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the ESU and not on the parties provided that the ESU cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the ESU obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the ESU will obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);

5.5.3. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

5.5.4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

5.5.5. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or

proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the ESU may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

5.5.6. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

5.5.7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the ESU does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the ESU will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report; and

5.5.8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 calendar days prior to the time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

5.6. **Determination Regarding Responsibility**

5.6.1. **Decision-Maker(s).** The decision-maker(s) cannot be the same person as the Title IX Coordinator or the investigator(s).

5.6.2. **Exchange of Written Questions.** After the ESU has sent the investigative report to the parties pursuant to subsection 5.5.8, but before reaching a determination regarding responsibility, the decision-maker(s) will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) will explain to the party proposing the questions any decision to exclude a question as not relevant.

5.6.3.

5.6.4. **Written Determination.** The decision-maker(s) will issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) will apply the preponderance of the evidence standard. The written determination will include:

5.6.4.1. Identification of the allegations potentially constituting sexual harassment as defined in subsection 2.6;

5.6.4.2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

5.6.4.3. Findings of fact supporting the determination;

5.6.4.4. Conclusions regarding the application of the ESU's code of conduct to the facts;

5.6.4.5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the ESU imposes on the respondent, and whether remedies designed to restore or preserve equal access to the ESU's education program or activity will be provided by the ESU to the complainant; and

5.6.4.6. The ESU's procedures and permissible bases for the complainant and respondent to appeal.

5.6.5. The ESU will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the ESU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

5.6.6. The Title IX Coordinator is responsible for effective implementation of any remedies.

5.7. **Appeals.** The ESU will offer both parties the opportunity to appeal from a determination regarding responsibility, and from the ESU's dismissal of a formal complaint or any allegations therein, on the grounds identified below.

5.7.1. **Time for Appeal.** Appeals may only be initiated by submitting a written Notice of Appeal to the ESU Administrator within ten (10) calendar days of the date of the respective written determination of responsibility or dismissal from which the appeal is taken. The Notice of Appeal must include (a) the name of the party or parties making the appeal, (b) the determination, dismissal, or portion thereof being appealed, and (c) a concise statement of the specific grounds (from subsection 5.7.2 below) upon which the appeal is based. A party's failure to timely submit a Notice of Appeal will be deemed a waiver of the party's right to appeal under this policy, 34 C.F.R. part, 106, and Title IX.

5.7.2. **Grounds for Appeal.** Appeals from a determination regarding responsibility, and from the ESU's dismissal of a formal

complaint or any allegations therein, are limited to the following grounds:

5.7.2.1. Procedural irregularity that affected the outcome of the matter;

5.7.2.2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

5.7.2.3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

5.7.3. As to all appeals, the ESU will:

5.7.3.1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

5.7.3.2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

5.7.3.3. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in subsections 5.1.3–5.1.4.

5.7.3.4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

5.7.3.5. Issue a written decision describing the result of the appeal and the rationale for the result; and

5.7.3.6. Provide the written decision simultaneously to both parties.

**5.8. Informal Resolution.** The ESU will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, the ESU will not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the ESU may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the ESU:

5.8.1. Provides to the parties a written notice disclosing:

5.8.1.1. The allegations;

5.8.1.2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;

5.8.1.3. That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and

5.8.1.4. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

5.8.2. Obtains the parties' voluntary, written consent to the informal resolution process; and

5.8.3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

**5.9. Recordkeeping.**

5.9.1. The ESU will maintain for a period of seven years records of:

5.9.1.1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the ESU's education program or activity;

5.9.1.2. Any appeal and the result therefrom;

5.9.1.3. Any informal resolution and the result therefrom;  
and

5.9.1.4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The ESU will make these training materials publicly available on its website, or if the ESU does not maintain a website then the ESU will make these materials available upon request for inspection by members of the public.

5.9.2. For each response required under section 4, the ESU will create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the ESU will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the ESU's education program or activity. If the ESU does not provide a complainant with supportive measures, then the ESU will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the ESU in the future from providing additional explanations or detailing additional measures taken.

6. **ESU Administrator Authorized to Contract.** The board authorizes the ESU Administrator to contract for, designate, and appoint individuals to serve in the roles of the ESU's investigator(s), decision-maker(s),

informal resolution facilitator(s), or appellate decision-maker(s) as contemplated by this policy.

## 7. **Access to Classes and ESU.**

7.1. **General Standard.** Except as provided in this section or otherwise in 34 C.F.R. part 106, the ESU will not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex.

7.1.1. **Contact sports in physical education classes.** This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

7.1.2. **Ability grouping in physical education classes.** This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

7.1.3. **Human sexuality classes.** Classes or portions of classes that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.

7.1.4. **Choruses.** The ESU may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

7.2. **Classes and Extracurricular Activities.** The ESU may provide nonvocational single-sex classes or extracurricular activities as permitted by 34 C.F.R. part 106.

8. **Athletics.** It is the policy of the ESU that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, club, or intramural athletics offered by the



ESU, and that the ESU will not provide any such athletics separately on such basis.

**8.1. Separate Teams.** Notwithstanding the foregoing paragraph, the ESU may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.

**8.2. Equal opportunity.** The ESU will provide equal athletic opportunity for members of both sexes. Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams will not constitute noncompliance with this section.

**9. Certain Different Treatment on the Basis of Sex Permitted.**

Nothing herein shall be construed to prohibit the ESU from treating persons differently on the basis of sex as permitted by Title IX or 34 C.F.R. part 106. For example, and without limiting the foregoing, the ESU may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

- 10. Retaliation Prohibited.** Neither the ESU nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, 34 C.F.R. part 106, or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. The ESU will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. § 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of 34 C.F.R. part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to shall be addressed pursuant to Board Policy 2006 (Complaint Procedure).

**10.1. Specific Circumstances.**

10.1.1. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by this section.

10.1.2. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

11. **Notification of Policy.** The ESU will notify applicants for admission and employment, students, parents or legal guardians of students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the ESU of the existence of this policy. The requirement to not discriminate, as stated in Title IX and 34 C.F.R. part 106, in the ESU's education program(s) or activities extends to admission and employment, and inquiries about the application of Title IX and 34 C.F.R. part 106 to the ESU may be referred to the ESU's Title IX Coordinator, the Assistant Secretary for Civil Rights of the United States Department of Education, or both.
12. **Publication of Policy.** The ESU will prominently display on its website, if any, and in each handbook that it makes available to applicants for admission and employment, students, parents or legal guardians of students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the ESU, the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator(s).
13. **Application Outside the United States.** The requirements of this policy apply only to sex discrimination occurring against a person in the United States.
14. **Scope of Policy.** Nothing herein shall be construed to be more demanding or more constraining upon the ESU than the requirements of Title IX (20 U.S.C. § 1681) and 34 C.F.R. part 106. To the extent that the ESU is in compliance with Title IX and 34 C.F.R. part 106, then all of

the ESU's obligations under this policy shall be deemed to be fulfilled and discharged.

Adopted on: June 21, 2021

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