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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

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.

All projects undertaken pursuant to this policy will be subject to the following bond requirements

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.

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.

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.

Construction Projects with an Anticipated Cost of Under \$250,000

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 an individual procurement transaction for 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 Acquisition Procedures)**

For construction projects subject to this policy, simplified acquisitions are purchases that, in the aggregate amount, is more than \$10,000 and less than \$250,000 annually. For simplified acquisitions, 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.

Construction Projects with an estimated cost of \$100,000 and over will be made pursuant to the ESU's Policy on Bid Letting and Contracts.

Construction Projects with an Anticipated Cost Over \$250,000

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.

Advertising for Bids.

- 7.** 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.
- **8.** Nothing shall prevent the administrator or designee from advertising in additional media outlets or for a longer period of time.

Bid Documents

- **9.** 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.
- **10.** The bid documents shall also provide that such bids shall be opened simultaneously in the presence of the bidders or their representatives.
- **11.** Bids received after the date and time specified in the bid documents shall be returned to the bidder unopened.
- **12.** If bids are being opened on more than one contract, the board, in its discretion, may award each contract as the bids are opened.
- **13.** 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.
- **14.** Bids will be reviewed by the Administrator and/or designee and submitted to the board for approval.
- 15.** 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.

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

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.

Other Contract Matters

Required Terms

The non-Federal entity's contracts must contain the applicable provisions required by section 200.322 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.

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, veteran-owned businesses, and labor surplus area firms are used when possible and consistent with state law.

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

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.

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, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), record of past performance, and financial and technical resources when conducting a procurement transaction.

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.

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.

Record Keeping

17. 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.

18. 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.

Conflict of Interest and Code of Conduct

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

Contracts covered by this policy are subject to the following additional provisions.

19. 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.
20. 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.
21. The board may determine at its discretion that a financial interest is not substantial enough to give rise to a conflict of interest.

Favors and Gifts

An employee, officer, agent, and board member of the ESU may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, with the limited exception of unsolicited items of nominal value.

Enforcement

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

Financial Management

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.

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).

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.

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.

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.

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.

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.

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.

Other Contract Matters

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.

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, veteran-owned businesses, 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.

Record Keeping

22. 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.

23. 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.

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 17, 2024

Reviewed on:

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.

1. 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 an individual procurement transaction for 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 (Simplified Acquisition Procedures)

Simplified acquisitions are purchases that, in the aggregate amount, are more than \$10,000 and less than \$250,000 annually. For simplified acquisitions, 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 procurement transaction can only be fulfilled by a single source;
 - (2) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;
 - (3) The federal awarding agency or pass-through entity expressly authorizes written approval of 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;

- 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 to procure of A/E professional services. The method may not be used to purchase other services provided by 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, public policy, compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), record of past performance, and financial and technical resources when conducting a procurement transaction.

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

An employee, officer, agent, and board member of the ESU may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, with the limited exception of unsolicited items of nominal value.

D. Enforcement

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

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 \$10,000.

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 that 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. The ESU will notify the Federal agency or pass-through entity of any loss, damage, or theft of equipment that will have an impact on the program.

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 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 fair market value of \$10,000 or less, it may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency or pass-through entity.

I. Equipment Retention

When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment, or authorize a pass-through entity to permit the recipient to retain equipment, with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.

J. Equipment and Capital Expenditures

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

K. 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.

○

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, veteran-owned business, 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 17, 2024

Reviewed on:

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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
Official Communication with the Public

Only individuals who have prior administrative approval may issue press releases or other official communications regarding ESU-related activities and events in furtherance of the individual's official responsibilities. 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: June 17, 2024

Reviewed on:

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
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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
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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
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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

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.

Owner Signature

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 Affected 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: _____

Reviewed on: January 15, 2024

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

Adopted on: June 21, 2021

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

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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 Pregnant Workers Fairness Act (PWFA) – requires covered employers to provide reasonable accommodations to qualified employee’s or applicant’s known limitations related to, affected by, or arising out 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.

Adopted on: June 21, 2021

Revised on: June 17, 2024

Reviewed on:

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; 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.

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4057 Title IX

Nondiscrimination. The ESU does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates including in admission and employment. Inquiries about Title IX may be referred to the ESU's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both. The ESU's Title IX Coordinator may be contacted at Title IX Coordinator, 412 West 14th Ave, Holdrege, NE 68949, lonelso@esu11.org, 308-995-6585. The ESU's nondiscrimination policy and grievance procedures are included in Policy 4057, or can be accessed at: www.esu11.org. To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please contact the Title IX Coordinator.

Publication Notice. The ESU will include the following notice on its website and in each handbook, catalog, announcement, bulletin, application form, and other places as required by law:

The ESU prohibits sex discrimination in any education program or activity that it operates and individuals may report concerns or questions to the Title IX Coordinator. The ESU's Title IX policy, notice, and other information may be accessed at the following link: www.esu11.org.

Retaliation Prohibited. Retaliation, including peer retaliation, is prohibited in the ESU's education program or activity. If the ESU has information about conduct that reasonably may constitute retaliation under Title IX, it may be required to treat it as an allegation of sex discrimination. Upon receiving a complaint alleging retaliation, the ESU will initiate its grievance procedures or informal resolution process.

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

Complainant means an employee, a student, or a parent, guardian, or other individual with the legal right to act on behalf of a complainant who is alleged to have been subjected to conduct that could constitute sex discrimination, including sex-based harassment; or any other person who may have been subjected to sex discrimination when that person was participating or attempting to participate in the ESU's education program or activity.

Complaint means an oral or written request to the ESU that objectively can be understood as a request for the ESU to investigate and make a determination about alleged sex discrimination under Title IX.

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.

Respondent means a person who is alleged to have violated the ESU's prohibition on sex discrimination. When a sex discrimination complaint alleges that the ESU's policy or practice discriminates on the basis of sex, the ESU is not considered a respondent.

Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex that is:

Quid pro quo harassment. An employee, agent, or other person authorized by the ESU to provide an aid, benefit, or service under the ESU's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the ESU's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant's ability to access the ESU's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the ESU's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the ESU's education program or activity.

Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

Sex Offenses, Forcible—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

- **Rape**—(Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Sodomy**—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Sexual Assault With An Object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- **Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Sex Offenses, Non-forcible—(Except Prostitution Offenses) Unlawful, non-forcible sexual intercourse.

- **Incest**—Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape**—Non-Forcible sexual intercourse with a person who is under the statutory age of consent

Dating violence meaning violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the length and type of relationship and the frequency of interaction between the persons involved in the relationship;

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the ESU, or a person similarly situated to a spouse of the victim;
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- Shares a child in common with the victim; or
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Response to Sex-based Harassment.

All Employees. All ESU employees must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination, including sex-based harassment under Title IX.

Title IX Coordinator. The ESU will designate and authorize at least one employee as the ESU's "Title IX Coordinator," to coordinate the ESU's efforts to comply with its responsibilities under Title IX and this policy. The ESU administrator or Title IX Coordinator is authorized to delegate specific duties to one or more designees.

For conduct that could constitute sex-based harassment, the Title IX Coordinator must take the following actions:

- Offer and coordinate supportive measures for the complainant and for the respondent;
- Notify the complainant or the individual who reported the conduct of the grievance procedures and, if appropriate, the informal resolution process.
- Take other appropriate steps to avoid the recurrence of sex discrimination and restore or maintain equal access to the ESU's programs and activities.

Supportive Measures. The ESU will provide supportive measures, as appropriate, in cases involving sex-based harassment. These measures may include but are not limited to: counseling; extending deadlines; increased supervision; no-contact directives; leaves of absence; changes in class, work, or activities, regardless of whether there is a comparable alternative; and

training and education programs related to sex-based harassment. Supportive measures may be continued, modified, or discontinued at the conclusion of any grievance process. Supportive measures will not be disclosed to anyone other than the person to whom they apply and others, including ESU officials, who need to know the supportive measures to implement them.

Requests to Modify Supportive Measures. A complainant or respondent may request modification or reversal of the ESU's decision to provide, deny, change, or terminate supportive measures applicable to them. Requests must be made to the Title IX Coordinator in writing, and an impartial individual will review the request.

Students with Disabilities. If the complainant or respondent is a student with a disability, the Title IX Coordinator will consult with one or more members of the student's IEP or Section 504 team to determine compliance with those laws while implementing supportive measures and all other requirements of this policy and Title IX.

Emergency Removal. The ESU is authorized to remove 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; determines that an imminent and serious threat to the health or safety of a complainant or other persons arising from the allegations of sex discrimination justifies removal; and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

Administrative Leave. The ESU is authorized to place an employee respondent on administrative leave from employment responsibilities during the pendency of the ESU's grievance procedures.

Informal Resolution. The ESU may offer an informal resolution process unless the complaint includes allegations that an employee engaged in sex-based harassment of a student or informal resolution would be contrary to law. Prior to initiating informal resolution, the parties will be provided with notice of the allegations. Participation in informal resolution is voluntary, and any informal resolution will include consent from the complainant and respondent, the ability to withdraw from the process, and the right to resume the grievance process. If an agreement is reached, it precludes the parties from initiating or resuming the grievance process.

The informal resolution facilitator will not be the same person as the investigator or the decisionmaker in the ESU's grievance procedures. Potential terms that may be included in an informal resolution agreement include but are not limited

to restrictions on contact, restrictions on participation in programs or activities, and disciplinary sanctions.

If informal resolution is offered, the ESU will maintain all evidence gathered, communications about the informal resolution process, and the agreement reached. This information will be disclosed to outside individuals only as permitted by law and if required to implement the requirements of the agreement or Title IX. If no agreement is reached, only relevant and permissible evidence received during the informal resolution process will be considered during the grievance process.

Grievance Procedures to Resolve Complaints of Sex Discrimination. Any person designated as Title IX Coordinator, investigator, or decision maker will not have a conflict of interest or bias for or against any party, generally or specifically. The decisionmaker may be the same person as the Title IX Coordinator or investigator.

Complaint. Complaints of sex-based harassment may only be made by a complainant; a parent, guardian, or other individual with the legal right to act on behalf of a complainant; or the Title IX Coordinator. Complaints of sex discrimination (excluding complaints of sex-based harassment) may be made by any person who was participating or attempting to participate in the ESU's education program or activity at the time of the alleged sex discrimination.

Complaint by Coordinator. In the absence of a complaint made by any other individual, the Title IX Coordinator will determine whether to initiate a complaint of sex discrimination. The Title IX Coordinator must consider, at a minimum, the following factors:

- The complainant's request not to proceed with the initiation of a complaint;
- The complainant's reasonable safety concerns regarding the initiation of a complaint;
- The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- The age and relationship of the parties, including whether the respondent is an employee of the ESU;
- The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and

- Whether the ESU could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

If the Title IX Coordinator initiates a complaint, they will notify the complainant prior to doing so and address reasonable concerns about the complainant’s safety or the safety of others, including by providing supportive measures.

Consolidation of Complaints. The ESU may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references in this section to a party, complainant, or respondent include the plural, as applicable.

Basic Procedures. This grievance procedure is governed by the following basic requirements:

- A respondent is presumed not responsible for the alleged sex discrimination until a determination is made at the conclusion of the grievance procedure;
- The ESU will treat the complainant and respondent equitably throughout the grievance process;
- The ESU will take reasonable steps to protect the privacy of individuals participating in the grievance process in a manner that does not restrict the parties from obtaining and presenting evidence, speaking to witnesses, consulting with family members or advisors, or otherwise participating in the grievance process;
- The ESU will use the following timelines for each complaint, but the Title IX Coordinator or designee may extend them as needed:

Major Stage	Target Duration (calendar days)
Completion of the ESU’s decision whether to dismiss or investigate a complaint of sex discrimination	1-15
Investigation	1-30
Determination	1-30
Appeal	1-20

Notice of Allegations. Upon initiation of the grievance procedure, the ESU will provide notice of the allegations to the parties whose identities are known. The notice will include a copy of this policy; the parties involved in the

incident(s); the conduct alleged to constitute sex discrimination; and the date(s) and location(s) of the alleged incident(s), if available. Retaliation is prohibited.

If the ESU decides to investigate additional allegations of sex discrimination that are not included in the initial notice, the ESU will provide notice of the additional allegations to the parties.

Complaint Investigation. The burden is on the ESU to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred. The individual investigating and deciding the complaint will:

- Provide an equal opportunity for the parties to present fact witnesses and relevant and permissible evidence;
- Objectively review all evidence gathered through the investigation and determine what evidence is relevant and permissible;
- Provide each party with an accurate description of the relevant and permissible evidence, and upon request, copies of this evidence;
- Provide the parties a reasonable opportunity to respond to the evidence;
- Use a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility, but credibility will not be based upon any individual's status as a complainant, respondent, or witness; and
- Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. For purposes of this paragraph, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

Relevant and Permissible Evidence. The ESU will consider relevant and permissible evidence. Relevant evidence is evidence related to the allegations of sex discrimination under investigation as part of the grievance procedure. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

Generally relevant evidence is permissible, but does not include:

- Evidence that is protected under a privilege as recognized by Federal or State law;

- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional in connection with the provision of treatment to the party or witness unless the ESU obtains that party's or witness's voluntary, written consent for use in this grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless that evidence is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

Determining Whether Sex Discrimination Occurred. The ESU will:

- Use the preponderance of the evidence standard of proof, that it is more likely than not, to determine whether sex discrimination occurred;
- Use only relevant and permissible evidence to reach a determination;
- Notify the parties in writing of the determination whether sex discrimination occurred, including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
- If there is a determination that sex discrimination occurred, coordinate and provide remedies to restore equal access, coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions, and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur;
- Not discipline a party, witness, or others participating in a ESU's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the ESU's determination whether sex discrimination occurred.

Dismissal of a Complaint. A complaint of sex discrimination made through the grievance procedure may be dismissed for any of the following reasons:

- The ESU is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in the ESU's education program or activity and is not employed by the ESU;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint,

and the ESU determines that without the complainant's withdrawn allegations, the remaining alleged conduct would not constitute sex discrimination even if proven;

- The ESU determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint under this paragraph, the ESU must make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the ESU will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the ESU must also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

The ESU will notify the complainant that a dismissal may be appealed and provide the complainant with an opportunity to appeal the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the ESU must also notify the respondent that the dismissal may be appealed on the bases set out in this policy. Upon the dismissal of a complaint, at a minimum, the ESU will:

- Offer supportive measures to the complainant, and offer supportive measures to the respondent if the respondent has been notified of the complaint;
- Require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the ESU's education program or activity.

Appeal. The ESU will provide the parties the opportunity to appeal the decisionmaker's written determination or a dismissal of a complaint, on the grounds identified below. The ESU will implement appeal procedures equally for the parties, including a reasonable and equal opportunity to make a statement in support of or challenging the outcome being appealed. Appeals under Title IX, like other comparable proceedings, will be handled consistent with the ESU's general complaint policy.

Time for Appeal. Appeals may only be initiated by submitting a written Notice of Appeal to the ESU administrator within three (3) calendar days of the party's receipt of (1) the written determination of whether sex discrimination occurred from which the appeal is taken, or (2) the written dismissal of the complaint from which the appeal is taken.

Notice of Appeal Filed By Party. The Notice of Appeal must include (a) the name of the party or parties appealing, (b) the determination,

dismissal, or portion thereof being appealed, and (c) a concise statement of the specific grounds (from the following subsection) 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 and Title IX.

Appeals of Dismissals. If a dismissal is appealed, the ESU will provide notice of the allegations to the complainant and respondent if not provided previously.

Appeal Decision. The decisionmaker for the appeal will be an individual who did not take part in the investigation, determination, and/or decision to dismiss the complaint. The appeal decisionmaker will notify the parties of the result of the appeal and the rationale for the result.

Disciplinary Sanctions and Remedies. If it is determined that sex-based harassment occurred, the ESU may impose disciplinary sanctions that may include suspension, expulsion, mandatory reassignment, adverse employment action up to and including termination, or any other actions regarding student behavior that are reasonably necessary to aid the student, further ESU purposes, or prevent interference with the educational process. Such actions may include counseling of students, parent conferences, referral to restorative justice practices or services, rearrangement of schedules, requirements that a student remain in the ESU or its facilities after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, psychological evaluation, or psychiatric evaluation upon the written consent of a parent or guardian to such counseling or evaluation.

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.

Recordkeeping. The ESU will maintain, for a period of at least seven years, the following:

- For each complaint of sex discrimination, records documenting the informal resolution process or grievance procedures and the outcome.
- Records documenting the actions the ESU took to meet its obligations under Title IX for any allegation of sex discrimination.
- All materials used to provide training as required by this policy. The ESU will make these training materials available upon request for inspection by members of the public.

Adopted on: June 17, 2024

Reviewed on: _____

Revised on: _____

4060

Firearms and Weapons for Non-Students

Weapons. No person may possess, handle, or transmit any weapon while on ESU grounds or at any ESU activity or event off ESU grounds except as permitted by this policy. **Definition of Weapon.** The term "weapon" means any object, device, instrument, material, or substance which is capable of causing injury in the manner it is used or intended to be used.

Firearms. No person may bring, possess, handle or transmit a firearm on ESU grounds, in an ESU owned vehicle, or at an ESU activity or event off ESU grounds, except as permitted by this policy. **Definition of Firearm.** The term "firearm, as defined in 18 U.S.C. 921, means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapon, any firearm muffler or firearm silencer, or any destructive device (excluding an antique firearm).

Exceptions Regarding Firearms. The prohibition against firearms does not apply to:

1. The issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this State, or Reserve Officers' Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training;
2. The possession of firearms by peace officers or other duly authorized law enforcement officers;
3. The carrying of firearms by qualified law enforcement officers or qualified retired law enforcement officers carrying pursuant to 18 U.S.C. 926B or 926C, respectively, as such sections existed on January 1, 2023
4. Firearms that may lawfully be possessed by a person who is receiving instruction at the ESU under the immediate supervision of an adult instructor;
5. Firearms which may lawfully be possessed by a person for the purpose of using them, with the approval of the ESU, in a historical reenactment, in a hunter education program, or as part of an honor guard;

6. Firearms contained within a private vehicle ***operated by a nonstudent adult*** that are not loaded ***and*** are enclosed in a case or are in a locked firearm rack that is on a motor vehicle; or
7. A handgun carried as a concealed handgun by a nonstudent other than a minor or prohibited person in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public and used by the ESU if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, a hardened compartment securely attached to the motorcycle while the vehicle is in or on such parking area.

Consequences. In the event a person violates this policy, the ESU may:

- Make a report to law enforcement;
- Ban any violator from ESU grounds, ESU vehicles, or ESU events for any time period it deems appropriate; and/or
- Take any other action allowed by law.

Adopted on: June 17, 2024

Revised on: _____

Reviewed on: _____