

# Explanatory Notes

## ESC Localized Policy Manual Update 22

District: Region One Education Service Center  
BAA (LOCAL) BOARD OF DIRECTORS LEGAL STATUS  
POWERS AND DUTIES

For your consideration, we offer these policy revisions to replace the ESC's policy from 1998.

In addition, as required by federal regulation at 45 C.F.R. 1304.50, the proposed provisions regarding board program governance for an Early Head Start or Head Start program are recommended for inclusion in this policy for ESCs who operate these programs.

BBA (LEGAL) BOARD MEMBERS  
ELIGIBILITY/QUALIFICATIONS

Based on a recently adopted change to 19 Administrative Code 53.1001 regarding GENERAL QUALIFICATIONS to allow a member of the State Board of Education to hold the office of member of an ESC board of directors, the enclosed policy is recommended for inclusion in your manual.

The change was effective April 9, 2017.

CHF (LEGAL) PURCHASING AND ACQUISITION  
INDEPENDENT CONTRACTORS

This legally referenced policy is being added to the ESC's policy manual to include provisions from the Every Student Succeeds Act (ESSA). The new provisions require an ESC that receives Title I funds to have regulations or policies that prohibit assistance to an ESC employee, contractor, or agent in obtaining a new job if there is knowledge or probable cause to believe that the employee, contractor, or agent engaged in sexual misconduct regarding a minor or student. Certain exceptions to the requirements apply.

CHF (LOCAL) PURCHASING AND ACQUISITION  
INDEPENDENT CONTRACTORS

This local policy is recommended for revision to satisfy policy requirements from the Every Student Succeeds Act (ESSA), described at CJ(LEGAL), prohibiting employment assistance to certain individuals who are believed to have engaged in sexual misconduct regarding a minor or student. The local policy provisions prohibit an ESC employee from assisting any contractor or agent of the ESC or of another ESC in obtaining a new job if the employee knows or has probable cause to believe that the contractor or agent engaged in such behavior. Likewise, the policy prohibits an ESC contractor or agent from assisting an employee, contractor, or agent of the ESC or of another ESC in obtaining a job if the contractor or agent knows or has probable cause to believe that the individual engaged in sexual misconduct with a minor or student.

See DC for corresponding provisions prohibiting employment assistance to employees of the ESC or of another ESC.

We have retained the ESC's locally developed text at PROGRAM CONSULTANTS and CONTRACTING FOR SERVICES.

CM (LEGAL) INSTRUCTIONAL MATERIALS

The majority of changes regarding ESC procedures for handling samples of instructional materials and public access are based on the adoption of 19 Administrative Code 66.39 and repeal of 19 Administrative Code 66.54, .57.

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An additional change is based on a revision to 19 Administrative Code 66.1029(b) regarding commissioner-provided access and comment on instructional materials.

### CP (LEGAL) RECORDS MANAGEMENT

To provide further guidance to ESCs, considerable detail has been added from existing statute to this legally referenced policy on records management, including:

- DEFINITIONS for "custodian," "essential record," "permanent record," "records control schedule," "records management," "records management officer," "records retention schedule," and "retention period";
- The board's duty to establish a RECORDS MANAGEMENT PROGRAM that enables the board, custodians, and the records management officer (RMO) to fulfill statutory responsibilities for records management and preservation;
- The RMO's duty to prepare and file with the Texas State Library and Archives Commission (TSLAC) a RECORDS CONTROL SCHEDULE that includes a retention period for each record;
- TSLAC's acceptance or rejection of the schedule and other required documents at TSLAC REVIEW;
- An EXCEPTION to the DESTRUCTION OF RECORDS provisions for a student education record when there is an outstanding request to inspect and review the record; and
- At PRESERVATION OF RECORDS, the conditions under which permanent records must be stored.

Other revisions throughout are to better track existing statutory language.

### CP (LOCAL) RECORDS MANAGEMENT

Revisions to this local policy on records management were developed with input from the Texas State Library and Archives Commission (TSLAC), with the goal of creating a single document that can be submitted to TSLAC for compliance purposes.

The Local Government Records Act gives an ESC three options in establishing its RECORDS CONTROL SCHEDULE. The ESC may:

- File with TSLAC a written declaration that the ESC has adopted a schedule that complies with TSLAC's record retention schedules available on the TSLAC website;
- File with TSLAC the record control schedules developed by the ESC that meet the minimum legal retention requirements; or
- Keep all records permanently.

In accordance with common ESC practice, this local policy reflects the first option. Please contact your ESC's policy consultant for an adjustment to this policy if your ESC has chosen a different approach.

Other recommended changes include:

- The addition of the definition of "LOCAL GOVERNMENT RECORD";
- Designation of the executive director as the ESC's RECORDS MANAGEMENT OFFICER (per response to policy consultant);

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- Clarification that the records management officer shall administer the ESC's program in accordance with the Local Government Records Act;
- The addition of the requirement for the records management officer to file his or her name with TSLAC within 30 days of assuming the position (see NOTIFICATION);
- Clarification at RECORDS DESTRUCTION PRACTICES that all local government records are considered ESC property that can only be destroyed or removed as authorized;
- Deletion of the list of circumstances when routine record destruction practices are suspended in favor of a reference to administrative procedures that will describe these circumstances; and
- The addition of TRAINING recommendations for the records management officer and custodians of records.

DBD (LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS  
CONFLICT OF INTEREST

This policy has been revised to add at HOLDING CIVIL OFFICE (see page 3) existing statutory text clarifying that a position or membership in the Texas military forces is not considered a civil office of emolument.

DC (LEGAL) EMPLOYMENT PRACTICES

Revisions beginning on page 3 and throughout this policy are to better track existing statutory language.

Additionally, this legally referenced policy is being amended to include provisions from the Every Student Succeeds Act (ESSA). The new provisions, beginning on page 7, require an ESC that receives Title I funds to have regulations or policies that prohibit assistance to an ESC employee in obtaining a new job if there is knowledge or probable cause to believe that the employee engaged in sexual misconduct regarding a minor or student. Certain exceptions to the requirements apply.

DC (LOCAL) EMPLOYMENT PRACTICES

Recommended revisions to this local policy are to satisfy policy requirements from the Every Student Succeeds Act (ESSA), described above at DC(LEGAL), prohibiting employment assistance to ESC employees who are believed to have engaged in sexual misconduct regarding a minor or student. The local policy provisions prohibit an ESC employee from assisting an employee of the ESC or of another ESC in obtaining a new job if the employee knows or has probable cause to believe that the other employee engaged in such behavior. See also CJ for corresponding prohibitions relating to contractors and agents.

Administrative provisions addressing exit interviews and reports are recommended for deletion from board policy.

No other changes were made to this policy.

DEBA (LEGAL) LEAVES AND ABSENCES  
FAMILY AND MEDICAL LEAVE

An existing definition of "EQUIVALENT POSITION" has been added to this legally referenced policy on family and medical leave. See page 4. On return from Family and Medical Leave Act (FMLA) leave, an employee is entitled to be returned to the same position the employee held when leave began or to an equivalent position.

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Citations have been updated throughout.

### DH (EXHIBIT) EMPLOYEE STANDARDS OF CONDUCT

Changes to this exhibit on the Educators' Code of Ethics are a result of amended Administrative Code rules, effective December 27, 2016. The change at Standard 1.13 makes it a violation of the Code of Ethics for an educator to be intoxicated on school property or during school activities when students are present. The change at Standard 1.14 implements provisions of the Every Student Succeeds Act (ESSA) that prohibit employees from providing assistance to school employees, contractors, or agents in obtaining a new job if there is knowledge or probable cause to believe that the employee, contractor, or agent engaged in sexual misconduct regarding a minor or student. See also the update notes at CHF and DC.

### DI (LEGAL) EMPLOYEE WELFARE

Changes to this legally referenced policy are to add detail regarding labeling and relabeling of hazardous chemical containers and to better reflect statute.

### E (LEGAL) COMMUNICATIONS

The table of contents for Section E has been revised to add a new policy code at EG, Student Records.

### EG (LEGAL) STUDENT RECORDS

ESCs may maintain student records subject to the privacy and access requirements in the Family Educational Rights and Privacy Act (FERPA). For example, ESCs that receive federal funds to operate educational programs such as Head Start, Early Head Start, and adult education programs are subject to FERPA. In addition, ESCs may hold student records for charter schools that have closed. Therefore, the enclosed new legal policy, EG, regarding student records is recommended for inclusion in the policy manual of ESCs.

### EG (LOCAL) STUDENT RECORDS

ESCs may have student records subject to the privacy and access requirements in the Family Educational Rights and Privacy Act (FERPA). For example, ESCs that receive federal funds to operate educational programs such as Head Start, Early Head Start, and adult education programs are subject to FERPA. In addition, ESCs may hold student records for charter schools that have closed. Therefore, the proposed local policy on student records at this new code, EG, is recommended for inclusion in the policy manual of ESCs who have student records subject to FERPA.

We have included information submitted by the ESC designating certain ESC employees as CUSTODIAN OF RECORDS for student records and RECORDS RESPONSIBILITY FOR STUDENTS IN SPECIAL EDUCATION.