

## Explanatory Notes ESC Localized Policy Manual Update 19 (Local Policy Edits Only)

### **BBE (LOCAL) BOARD MEMBERS AUTHORITY**

We recommended sweeping revisions to this local policy to clarify existing practice and broaden the scope of the current provisions addressing BOARD AUTHORITY, TRANACTING BUSINESS, and powers of individual board members, including LIMITATIONS on an individual board member's access to in-formation. New provisions apply to any type of information and specify that if a board member is not acting in his or her official capacity, the board member has no greater access to ESC records than a member of the public. However, a board member who is denied access to a record may ask the board to determine whether the record should be provided or may file a request under the Public Information Act, which includes procedures for obtaining an attorney general decision. Access to confidential student records remains limited to situations where the board member is acting in his or her official capacity and has a legitimate educational interest in the records.

This policy has also been updated throughout for consistency with policy style.

### **CP (LOCAL) RECORDS MANAGEMENT**

In light of Texas Attorney General Opinion GA-1038 (Jan. 21, 2014), which holds that ESCs are subject to records retention requirements of the Local Government Records Act, we recommend the addition of this local policy to provide basic guidance regarding records management and destruction.

### **DAA (LOCAL) EMPLOYMENT OBJECTIVES EQUAL EMPLOYMENT OPPORTUNITY**

We have added a cross-reference to policy EF outlining public complaints added at Update 18. We have also added a cross-reference to policy DHA addressing sexual harassment.

### **DBAA (LOCAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS CRIMINAL HISTORY AND CREDIT REPORTS**

In April 2012, the Equal Employment Opportunity Commission (EEOC) issued updated guidance regarding the role of arrest and conviction records in employment decisions, available at [http://www1.eeoc.gov/laws/guidance/arrest\\_conviction.cfm?renderforprint=1](http://www1.eeoc.gov/laws/guidance/arrest_conviction.cfm?renderforprint=1). The guidance indicates that, even if state law or local policy requires automatic exclusion from employment for a particular offense, an ESC may not refuse to hire a person who has been convicted of an offense listed in state law or local policy unless the ESC has determined that its decision is job-related and consistent with business necessity. This local policy is recommended for inclusion in the ESC's policy manual to address the EEOC guidance.

The policy text included for your consideration reflects this process by explaining at DISQUALIFYING OFFENSES that all ESC positions have the potential for contact with students and that the ESC shall disqualify from employment a person whose criminal history indicates that the person poses a threat to students or employees. This language provides a basis for determining that the exclusion of a candidate for these offenses, which would include the state law offenses that make a person ineligible to work in an ESC, are job-related and a business necessity. The policy language also provides that, consistent with business necessity the ESC shall disqualify a person whose criminal history is otherwise inconsistent with the job duties of the position. This provision could apply, for example, if a

candidate with a conviction for money laundering applies for a position as the ESC's chief financial officer.

Reaching the conclusion that a decision to disqualify a candidate is job-related and consistent with business necessity will generally require an INDIVIDUALIZED ASSESSMENT of each final candidate's criminal history, taking into account a variety of factors, as listed in the policy.

The EEOC guidance states that an employment decision based solely on an arrest, without further justification, is not job-related and consistent with business necessity; therefore, the enclosed policy language states that the ESC shall not disqualify a person based solely on an ARREST. However, as permitted by the guidance, the ESC may base the employment decision on the conduct underlying the arrest if the conduct makes the person unfit for the job position in question. Also included in the policy text is a reminder of the legal requirement to provide SBEC NOTIFICATION if a candidate who is certified by SBEC has a reported criminal history.

For further information, TASB Legal Services has published an FAQ addressing Criminal History Reviews of District Employees and Volunteers, including the EEOC guidance, at [http://www.tasb.org/services/legal/esource/personnel/pers\\_emp\\_requirement.aspx#Criminal\\_Background\\_Checks](http://www.tasb.org/services/legal/esource/personnel/pers_emp_requirement.aspx#Criminal_Background_Checks).

CREDIT HISTORY checks as part of the hiring process are also addressed in this policy. A recommended provision explains that the ESC shall only obtain credit history checks when the person's credit history is related to the position. The ESC must comply with the Fair Credit Reporting Act before obtaining credit history.

## **DC (LOCAL) EMPLOYMENT PRACTICES**

We have added a cross reference to policy DBAA for information related to the evaluation of criminal history records.

We have retained the ESC's locally developed text throughout this policy. However, the hyperlink at COMPENSATION HEAD START is no longer valid. We recommend removing this link.

## **EAC (LOCAL) PUBLIC INFORMATION PROGRAM RECORDS MANAGEMENT (Center edit)**

Center recommends deletion due to information moving to CP LEGAL/LOCAL as a result of TASB Legal Update 19.