

Explanatory Notes

ESC Localized Policy Manual Update 21

District: Region One Education Service Center
BBFA (LEGAL) ETHICS
CONFLICT OF INTEREST DISCLOSURES

Revisions for style and clarity, including adding margin notes where appropriate, rearranging existing text, and updating legal citations, have been made throughout this policy.

In addition, we have revised the text at SUBSTANTIAL INTEREST AFFIDAVIT beginning on page 1 and FAILURE TO FILE on page 3 to more closely align with law. The definition of "LOCAL PUBLIC OFFICIAL" is a long-standing legal definition that we have included here for purposes of clarity.

CAA (LOCAL) FISCAL MANAGEMENT GOALS AND OBJECTIVES
FINANCIAL ETHICS

Revisions to this local policy on financial ethics are recommended as a result of revised federal regulations governing all federal grants and awards, known as the new Education Department General Administrative Regulations (EDGAR).

At the Note on page 1, we have added references to key legal provisions at CBB(LEGAL) and additional local provisions at CB(LOCAL), below.

The standards of conduct in CAA(LOCAL), which require individuals involved in ESC financial transactions to act with integrity and diligence and prohibit those individuals from engaging in fraud or financial impropriety, have been broadened to include "agents," as referred to in EDGAR conflict of interest provisions.

For further clarification, new text affirmatively states that FRAUD AND FINANCIAL IMPROPRIETY includes the failure to comply with requirements for state and federal awards (item 12) and the failure to provide financial records as required by federal entities (item 10).

At FEDERAL AWARDS DISCLOSURE, text reiterates the legal requirement for an ESC to disclose in writing to the federal awarding agency or pass-through entity (TEA) any violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting a federal grant award.

For additional information, see TEA's website at:

http://tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/The_New_EDGAR/.

CB (LOCAL) REVENUE SOURCES

This local policy on state and federal revenue sources is recommended for inclusion in the ESC's policy manual as a result of revised federal regulations governing all federal grants and awards, known as the new Education Department General Administrative Regulations (EDGAR).

The policy clarifies the executive director's authority regarding state and federal grants and awards and connects the ESC's policy manual to relevant administrative procedures required by EDGAR.

Text included for consideration at GRANTS AND AWARDS authorizes the executive director to act in three key areas regarding state and federal grants and awards:

- Application for state and federal grants and awards deemed appropriate for ESC operations;
- Approval of funds for matching, cost sharing, or jointly funded projects up to amounts specifically allowed in the board-approved budget; and
- Approval of grant and award amendments.

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To ensure implementation of the affirmative policy statement that the ESC shall comply with state and federal grant and award requirements, the recommended text directs the executive director to develop and enforce financial management systems and procedures on internal control, procurement, and other topics as needed to provide reasonable assurance of compliance.

We have included default value amounts regarding limits when considering acceptance of GIFTS AND GRATUITIES for any single item of \$50 or more or items from a single contractor or subcontractor that have an aggregate monetary value of more than \$100 in a 12-month period.

CBB (LEGAL) REVENUE SOURCES FEDERAL

Revisions to this legally referenced policy on state and federal revenue sources are based on revised federal regulations governing all federal grants and awards, known as the new EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS (EDGAR).

Highlights of the EDGAR provisions have been included in the policy for ease of reference and access to relevant legal citations. ESCs should visit TEA's grants website at http://tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/The_New_EDGAR/ for the full text of the law and other essential information.

Topics addressed in the policy include general compliance standards, conflicts of interest and mandatory disclosures, general procurement standards, suspension and debarment, financial management and internal controls, and remedies for noncompliance. References and citations have also been added for direct grant programs, state-administered programs, and the General Education Provision Act.

CBF (LEGAL) REVENUE SOURCES INVESTMENTS

HB 870 reduced the hours of required ONGOING training from ten to eight hours for the ESC's chief financial officer and investment officer. See page 3.

We have clarified that the required QUARTERLY REPORTS cover investment transactions for the preceding reporting period. See page 4.

At AUTHORIZED INVESTMENTS, we added existing statutory text explaining that the board may specify that any of the statutorily authorized investments are not suitable for the ESC (page 5), and we have deleted the definition of corporate bond in favor of the statutory citation (page 11).

CH (LEGAL) PURCHASING AND ACQUISITION

New vendor disclosure requirements from HB 1295 and related rules have been added at DISCLOSURE OF INTERESTED PARTIES on page 2. An ESC may not enter into a contract that requires board action or a vote before the contract may be signed or that is valued at \$1 million or more unless the business entity entering into the contract submits to the ESC a disclosure of interested parties along with the signed contract. The disclosure will be on a form developed by the Texas Ethics Commission, and the ESC must submit all completed disclosures to the Texas Ethics Commission within 30 days of receipt.

SB 1281 clarifies that an ESC can participate in a COOPERATIVE PURCHASING PROGRAM through an interlocal agreement with another local government of this state or another state. See page 7.

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CI (LOCAL) PROPERTY DISPOSAL

We recommend for deletion text at SALE, LEASE, OR CONVEYANCE OF ANY INTEREST IN REAL PROPERTY. It is a by-product of a court order arising from a federal desegregation lawsuit to which schools are no longer subject.

CKD (LEGAL) SAFETY PROGRAM/RISK MANAGEMENT SECURITY

This policy has been customized for those ESCs that do not provide regular educational services to students on their premises. Because an ESC that does not offer regular educational services to students is not likely to be considered an educational institution, we have removed reference to Penal Code 46.03, which prohibits a person from possessing a firearm on the premises of an educational institution.

We have also removed reference to Penal Code 30.06, which creates the offense of trespass by license holder with a concealed handgun. This offense does not apply to property owned or leased by a governmental entity and is not a premise or other place where a license holder is prohibited from carrying a handgun under Section 46.03.

Because of HB 910 authorizing open carry of handguns in a shoulder or belt holster by a licensed individual, effective January 1, 2016, a license to carry a concealed handgun will be called a license to carry a handgun. Therefore, the term "concealed" has been deleted throughout the policy.

CU (LEGAL) FACILITIES CONSTRUCTION

Reflected on page 7, HB 2049 adds new provisions on CONTRACTS FOR ENGINEERING OR ARCHITECTURAL SERVICES. A contract provision is void and unenforceable if it provides that an engineer or architect must indemnify the ESC or defend a party against claims based on the fault of the ESC, its agent, or its employee. A contract may provide for the reimbursement of an ESC's reasonable attorney's fees in proportion to the engineer's or architect's liability and may require that the engineer or architect name the ESC as an additional insured under the engineer's or architect's general liability insurance policy.

ESC contracts for engineering or architectural services must include the STANDARD OF CARE as described in the policy.

CUD (LEGAL) FACILITIES CONSTRUCTION CONSTRUCTION MANAGER-AT-RISK

HB 2634 prohibits an ESC's architect or engineer or any entity related to the engineer or architect from serving as the ESC's construction manager-at-risk and deletes a provision that once allowed the architect or engineer to do so under certain conditions. See ARCHITECT/ENGINEER, beginning on page 1.

DBAA (LEGAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS CRIMINAL HISTORY AND CREDIT REPORTS

HB 1783 requires an executive director to provide SBEC NOTIFICATION (see page 2) that a certified educator has a criminal record unless the executive director learned about the criminal record from the criminal history clearinghouse established by the Texas Department of Public Safety (DPS). This will avoid an executive director reporting information to TEA that TEA has already received from DPS.

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DBD (LOCAL) EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CONFLICT OF INTEREST

We have added a Note at the beginning of the policy to refer to CB for conflict of interest, gift, and gratuity provisions related to federal grants and awards.

DEA (LEGAL) COMPENSATION AND BENEFITS
SALARIES, WAGES, AND STIPENDS

The text at DESIGNATION OF COMPENSATION FOR BENEFITS represents standing law, which we have incorporated into this policy.

On page 5, HB 2974 modifies the method for determining the HEALTH INSURANCE CONTRIBUTIONS surcharge imposed on an ESC that hires a retiree. Under former law, an ESC was responsible for a health insurance surcharge in the amount of the state's contribution toward the employee and family's health insurance (the difference between the full premium and the specific employee's contribution). This bill provides that TRS will now determine the amount of the health insurance surcharge, taking into consideration the amount of the state's contribution.

Existing federal provisions on BREAKS FOR NURSING MOTHERS were moved to DG(LEGAL).

DEBB (LEGAL) LEAVES AND ABSENCES
MILITARY LEAVE

As reflected on page 2 at STATE LEAVE FOR MEMBER OF MILITARY OR RESCUE TEAM, HB 445 requires an ESC to provide written notice of the number of workdays of paid leave to which an employee is entitled each fiscal year under state law as a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team. Upon request, an ESC must provide the employee a statement of the number of workdays the employee used for paid military leave during the fiscal year.

Please note: The TASB HR Services 2015 Model Employee Handbook included provisions that satisfy this notice requirement.

DG (LEGAL) EMPLOYEE RIGHTS AND PRIVILEGES

The following changes were made to this legally referenced policy on employee rights and privileges:

- Existing federal provisions on BREAKS FOR NURSING MOTHERS—NONEXEMPT EMPLOYEES were moved without revision from DEA(LEGAL).
- New provisions from HB 786 provide that an ESC employee has a RIGHT TO EXPRESS BREAST MILK at the employee's workplace. An ESC, as a public employer, must develop a written policy on the expression of breast milk by employees, which must state that the ESC will support the practice of expressing breast milk and make reasonable accommodations for the needs of employees who express breast milk. The ESC must provide a reasonable amount of break time for an employee to express breast milk each time the employee has the need to express the milk and must provide a place, other than a multiple-user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk. An ESC may not suspend or terminate the employment of, or otherwise discriminate against, an employee because the employee has asserted her right to express breast milk. However, the bill does not create a private or state cause of action against a public employer.

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Please note: The TASB HR Services 2015 Model Employee Handbook included provisions to satisfy the requirement for a written policy.

DH (LEGAL) EMPLOYEE STANDARDS OF CONDUCT

SB 339 prohibits an ESC from enacting, adopting, or enforcing a rule or regulation that prohibits the possession of LOW-THC CANNABIS as authorized by Chapter 487 of the Health and Safety Code, which permits prescriptions for low-THC (non-intoxicating) cannabis in limited circumstances. See page 2.

DH (LOCAL) EMPLOYEE STANDARDS OF CONDUCT

Revisions at TOBACCO AND E-CIGARETTES are based on SB 97, which requires an ESC to prohibit employees from smoking or using e-cigarettes except in designated areas.

SB 339 prohibits a political subdivision from enacting, adopting, or enforcing a rule or regulation that prohibits the possession of low-THC cannabis as authorized by Chapter 487 of the Health and Safety Code, which permits prescriptions for low-THC (non-intoxicating) cannabis in limited circumstances. In accordance with this bill, we have added EXCEPTIONS to the ESC's prohibition against possession of controlled substances and drugs if an employee possesses low-THC cannabis or any other controlled substance or drug that a licensed physician has prescribed for the employee's child or another individual for whom the employee is a legal guardian. The ESC's existing exception for an employee's use of a drug prescribed by a licensed physician has been expanded to apply to use "or possession" of a "controlled substance" or drug.

EABB (LEGAL) ACCESS TO PUBLIC INFORMATION REQUESTS FOR INFORMATION

HB 685 provides that an officer for public information for the ESC may comply with a request for public information by referring a requestor to an exact Internet location or URL address on a website maintained by the ESC and accessible to the public if the requested information is identifiable and readily available on that website. The ESC must provide notice that the requestor may inspect the information or receive copies by mail. See LOCATION OF ACCESS beginning on page 3.

On page 4, if a requestor sends a request for public information by e-mail, the ESC may also send by e-mail any REQUESTS TO NARROW OR CLARIFY the original request. This change is from HB 2134.

EAC (LOCAL) PUBLIC INFORMATION PROGRAM RECORDS MANAGEMENT

We have deleted policy code EAC. All policies regarding records management are now addressed at policy code CP and the local policy at EAC is unnecessary.