

ESUCC  
Executive Committee Meeting  
Wednesday, September 5, 2018, 2:00 PM  
ESU No.10, 76 Plaza Blvd, Kearney, NE 68845

Attendance Taken at 2:03 PM.

Jeff West (NE): Present  
Dr Kraig Lofquist: Present  
Dan Schnoes (NE) (ESU 03): Absent  
Dr Larianne Polk (ESU 07): Present  
Geraldine Erickson (ESU 17): Present  
Attendance Update Taken at 2:48 PM.  
Dan Schnoes (NE) (ESU 03): Present

1. Call to Order
2. Roll Call
3. ESUCC Timeline
4. Agenda Item
  - 4.1. Policy Updates
    - 4.1.1. OER Copyright Policy
  - 4.2. President Report on Committees Assignments
  - 4.3. Approve Home Base for Staff
  - 4.4. Approval of Attorney 2018-2019
  - 4.5. Approve ESUCC Executive Director for 2018-2019
  - 4.6. Approve Distance Learning Director for 2018-2019
  - 4.7. ESUCC Administrator List
  - 4.8. Approve Nebraskans United for Property Tax Reform and Education

5. Next Meeting Agenda Items

6. Adjourn to Executive Session

7. Adjournment

{{Name: Agenda Item Name}}

{{Discussion: Agenda Item Discussion}}

{{Comments: Agenda Item Comments}}

{{Actions: Agenda Item Actions}}

KAREN A. HAASE  
STEVE WILLIAMS  
BOBBY TRUHE



TIMOTHY J. MALM  
COADY H. PRUETT  
SHARI RUSSELL, Paralegal

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## M E M O R A N D U M

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To: David Ludwig, Administrator  
FROM: Karen Haase and Tim Malm  
DATE: August 9, 2018  
RE: ESUCC Policy Code and Governing Manual

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You asked us to review the ESUCC Policy Code and Governing manual. This memo is a summary of our proposed policies and changes to existing policies.

**2000-8 Personally Identifiable Student Records.** In this policy we have recommended the removal of references to the Health Insurance Portability and Accountability Act ("HIPAA"). Educational entities are not typically treated as entities covered by HIPAA. HIPAA defines "covered entity" to mean a health plan; a health care clearinghouse; or a health care provider who transmits any health information in electronic form in connection with a transaction covered under the Act. Under a final rule issued by HHS, health information contained within student educational records that are subject to the Family Educational Rights and Privacy Act ("FERPA") are exempt from the requirements of HIPAA.

We also recommend adding a section on directory information. Under FERPA, an educational agency can disclose directory information without the consent of parents. Directory information typically includes:

- Name and grade
- Name of parent and/or guardian
- Address
- Telephone number, including the student's cell phone number
- E-mail address

- Date and place of birth
- Dates of attendance
- The image or likeness of students in pictures, videotape, film or other medium
- Major field of study
- Participation in activities and sports
- Degrees and awards received
- Social media usernames or handles
- Weight and height of members of athletic teams
- Most recent previous school attended
- Certain class work which may be published onto the Internet
- Classroom assignment and/or home room teacher
- Student ID number, user ID, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password, or other factor known or possessed only the authorized user.

Directory information does NOT include a student's social security number. Parents must be given the option to opt out of disclosure of directory information,

**3000-12 Purchasing.** We have recommended a section on purchasing using federal funds. The Education Department General Administrative Regulations (EDGAR) have created specific guidance for purchases with federal funds. As expenditures of federal funds cross specific spending thresholds, more rigorous oversight and bidding requirements attach. Additionally, the spending thresholds were changed in June of this year. You will see in this policy that we have set out the rules for purchases under \$10,000, for purchases between \$10,000 to \$250,000 and for purchases over \$250,000. There are also special requirements if the ESUCC is going to "sole source" an item -- for example if you specifically need to buy a name-brand piece of special education equipment like a Dynovox, which can only be purchased from a single vendor.

This policy includes miscellaneous additional required provisions such as the affirmative action obligation for women's and minority businesses and the "buy American" wording set forth in EDGAR. You should be sure that your staff who manage federal programs understand that they need to keep

all records for *six* years [Note: EDGAR requires three years, but the state retention schedule requires you to retain them for six years]. EDGAR also requires a lot of boilerplate be included in your contracts with vendors. Our policy does not regurgitate all of those requirements, but if you would like to be sure that you will not have any findings of non-compliance in your federal program audits, we would be happy to review your form vendor contracts.

Finally, this policy also includes several elements that program auditors will look for on their “check list,” including:

- *Use of Purchase Cards* - we refer back to our general policy on using purchase cards so that staff do not have to keep track of two sets of rules. This reference is something that program auditors look for, so we have it here as well so they see we have addressed it.
- A reference to “*full and open competition*” which is required.
- *Debarment and Suspension* - this went into effect for special education programs last year. We have moved the wording into this policy so that it is all in one place.
- A statement about *dispute resolution*, which some program reviewers are requesting to review.

**3000-13 Staff Members’ Conflict of Interest.** We recommend this section be changed to more closely adhere to the parameters of the Nebraska Political Accountability and Disclosure Act.

**3000-14 Purchasing (Credit) Card Program.** This policy has been modified to include a list of explicitly authorized purchases. It should also have a cap on the amount for each expenditure. Typically, we cap this amount at the federal micro-purchase threshold, which is currently \$10,000.

**3000-16 Sale or Disposal of ESUCC Property.** In this section we removed the “required two-thirds vote” wording. This restriction only applies to school districts.

**4000-18 Staff Use of Social Media and Other Digital Communication Resources.** In 2016, the Workplace Privacy Act made it unlawful for employers to require or even to request that employees provide their supervisors with the username and password to personal social media accounts. Complying with this prohibition is going to require schools to think carefully about staff members who use social media both in their personal

and professional capacities. We created a policy that protects the district while not discouraging teachers from using social media.

**4000-19 De Minimis Use of Public Resources.** This policy is recommended to keep ESUCC in compliance with the Nebraska Political Accountability and Disclosure Act and NDE Rule 27. It establishes guidelines for what is classified as incidental or de minimis use of public resources, and how to report the use of public resources as compensation for tax purposes. It also disallows the use of ESUCC devices to access obscene materials or engage in illegal activities.

## **2000-8. Personally Identifiable Student Records (FERPA/HIPAA) - Draft**

The Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

Personally identifiable student educational records generated by ESU Coordinating Council (ESUCC) employees for students referred and/or services provided on behalf of contracting school districts will be considered confidential and determined to be the property of the resident school district. Educational records will only be released when appropriate release of information forms with required signature(s) are received and approved by your department director. This covers both paper and electronic records collected and released.

## **3000-12.1 Fiscal Management for Purchasing and Procurement Using Federal Funds**

### **I. 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 ESUCC'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.

### **II. Procurement System**

The ESUCC maintains the following purchasing procedures.

#### **A. Responsibilities for Purchasing**

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

#### **B. Methods of Purchasing**

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

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

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the annual aggregate amount of which does not exceed \$3,500. Micro-purchases may be made or awarded without soliciting competitive quotations, to the extent ESUCC 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 ESUCC distributes micro-purchases equitably among qualified suppliers. The ESUCC will follow its standard policy on purchasing, which can be found earlier in this subsection.

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

Small purchases are purchases that, in the aggregate amount, is more than \$3,500 and less than \$150,000 annually. For small purchases, price or rate quotes shall be obtained in advance from a reasonable number of qualified sources as detailed in the ESUCC'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 \$150,000, the ESUCC 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 ESUCC performs a cost or price analysis in connection with every procurement action in excess of \$150,000, including contract modifications. The ESUCC will make an independent estimate of costs prior to receiving bids or proposals.

#### c) Noncompetitive Proposals (Sole Sourcing)

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:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the ESUCC; or
- After solicitation of a number of sources, competition is determined inadequate.

Noncompetitive proposals may only be solicited with the approval of the superintendent or the board. Sufficient and appropriate documentation that justifies the sole sourcing decision must be maintained by the superintendent or designee.

A cost or price analysis will be performed for noncompetitive proposals when the price exceeds \$150,000.

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

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

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

#### E. Debarment and Suspension

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

The ESUCC may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000 the ESUCC verifies that the vendor with whom the ESUCC 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 ESUCC 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 Superintendent or his/her designee shall be responsible for such verification.

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

The ESUCC 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 ESUCC of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

### III. Conflict of Interest and Code of Conduct

- A. Board and staff member conflicts of interest are governed by the ESUCC 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 ESUCC contracts which are prohibited from engaging in such actions if a real or apparent conflict of interest is present.
  - 2. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
  - 3. The board may determine at its discretion that a financial interest is not substantial enough to give rise to a conflict of interest.
- C. Favors and Gifts

The officers, employees, and agents of the ESUCC 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, or agents of the ESUCC at the board's discretion.

## E. Property Management Systems

### 1. Property Classifications

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 ESUCC for financial statement purposes, or \$5,000.

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 ESUCC for financial statement purposes or \$5,000, regardless of the length of its useful life. 2 C.F.R. §200.94.

Computing Devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. 2 C.F.R. §200.20.

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:

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

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.

### 2. 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).

### 3. Inventory Records

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

Serial number;

ESUCC identification number;

Manufacturer;

Model;

Date tagged and individual who tagged it;

Source of funding for the property;

Who holds title;

Acquisition date and cost of the property;

Percentage of federal participation in the project costs for the federal award under which the

property was acquired;  
Location, use and condition of the property; and  
Any ultimate disposition data including the date of disposal and sale price of the property.

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

#### 4. Physical Inventory

A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

The Executive Director 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 superintendent.

#### 5. Maintenance

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

#### 6. Lost or Stolen Items

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

#### 7. 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 ESUCC will not encumber the property for any non-federal program use without prior approval of the federal awarding agency and the pass-through entity.

#### 8. Disposal of Equipment

When it is determined that original or replacement equipment acquired under a federal award is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Superintendent or his/her designee will contact the awarding agency (or pass-through for a state-administered grant) for disposition instructions.

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

#### 9. 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 ESUCC will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible consistent with state law.

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

## C. Record Keeping

### 1. Record Retention

The ESUCC 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 ESUCC 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.

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 Districts) 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 District to maintain records regarding federal awards for a minimum of six (6) years. Consequently, the District 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.

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

The District 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.

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

## D. Privacy

The District 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: \_\_\_\_\_

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

Reviewed on: \_\_\_\_\_

### **3000-13. Staff Members' Conflict of Interest**

Any employee who meets the conditions set forth in this policy shall be deemed to have a business or financial conflict of interest.

- 1) Definitions. For the purposes of this policy:
  - a) Business with which an employee is associated shall include the following:
    - i) A business in which the employee or a member of his or her immediate family is a partner, a limited liability company, or serves as a director or an officer.
    - ii) A business in which the employee or a member of his or her immediate family is a stockholder in a closed corporation with stock worth one thousand dollars or more, or the employee or his or her immediate family owns more than a five percent equity interest or is a stockholder of publicly traded stock worth more than ten thousand dollars or more at fair market value, or which represents more than ten percent equity interest. This shall not apply to publicly traded stock under a trading account if the employee reports the name and address of the company and stockbroker.
    - iii) A business association shall be defined to include an individual as a partner, limited liability company member, director or officer, or a business in which the individual or member of the immediate family is a stockholder.
  - b) Immediate family member or member of the immediate family shall mean a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes
- 2) Contracts with the ESUCC.
  - a) No employee or member of his or her immediate family shall enter into a contract valued at two thousand dollars or more, in any one year, with the ESUCC unless the contract is awarded through an open and public process that (1) includes prior public notice and (2) allows the public to inspect during the ESUCC's regular business hours the proposals considered and the contract awarded.
  - b) The existence of any conflict of interest in any contract in which the employee has an interest and in which the ESUCC is a party, or the failure to make public the employee's interest known, may render a contract null and void.
  - c) The prohibition of a conflict of interest or requirement for public notice

shall apply when the employee, or his or her immediate family has a business association with the business involved in the contract or will receive a direct pecuniary fee or commission as a result of the contract.

3) Employing Members of the Immediate Family.

- a) An employee may employ or recommend or supervise the employment of an immediate family member if:
  - i) The employee does not abuse his or her position.
    - (1) Abuse of official position shall include, but not be limited to, employing an immediate family member:
    - (2) who is not qualified for and able to perform the duties of the position;
    - (3) for any unreasonably high salary;
    - (4) who is not required to perform the duties of the position.
  - ii) The employee makes a reasonable solicitation and consideration of applications for employment.
  - iii) The employee makes a full disclosure on the record to the governing body of the ESUCC and to the secretary of the Council.
  - iv) The Council approves the employment or supervisory position.
- b) The employee shall not terminate the employment of another employee so as to make funds or a position available for the purpose of hiring an immediate family member

4) Gifts, Loans, Contributions, Rewards, or Promises of Future Employment

- a) No employee shall offer or give to the following persons anything of value, including a gift, loan, contribution, reward, or promise of future employment, based upon an agreement that a vote, official action, or judgment would be influenced thereby:
  - i) a public official, public employee, or candidate.
  - ii) a member of the immediate family of an individual listed in Subparagraph 'a' above.
  - iii) a business with which an individual listed in Subparagraph (1) or (2) above is associated.
- b) No employee shall solicit or accept anything of value, including a gift, loan, contribution, reward, or promise of future employment based on an agreement that the vote, official action, or judgment of the employee would thereby be influenced.
- c) An employee shall not use or authorize the use of his or her public employment or any confidential information received through the public employment to obtain financial gain, other than compensation provided by law, for himself or herself or a member of his or her immediate family, or a business with which he or she is associated.
- d) An employee shall not use or authorize the use of personnel, resources, property, or funds under that person's official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items for personal financial gain, other than compensation provided by law.

5) Conflict of Interest Relating to Campaigning or Political Issues

- a) Except as provided below, an employee shall not authorize the use of ESUCC personnel, property, resources, or funds for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.
  - b) This does not prohibit an employee from discussing and voting upon a resolution supporting or opposing a ballot question.
  - c) This does not prohibit an employee under the direct supervision of a public official from responding to specific inquiries by the press or the public as to the board's opinion regarding a ballot question or from providing information in response to a request for information.
  - d) An employee may present his or her personal opinion regarding a ballot question or respond to a request for information related to a ballot question; but in so doing, the person should clearly state that the information being presented is his or her personal opinion and is not to be considered as the official position or opinion of the ESUCC. However, this shall not be done during a time that the individual is engaged in his or her official duties.
- 6) Conflict. To the extent that there is a conflict between this policy and the Nebraska Political Accountability and Disclosure Act ("Act"), the Act shall control.

Adopted on: \_\_\_\_\_

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

Reviewed on: \_\_\_\_\_

### **3000-14: Purchasing (Credit) Card Program**

The ESUCC approves the use of a purchasing card (credit card) program for the purchase of goods and services for and on behalf of the ESUCC. The ESUCC shall determine the type of purchasing card or cards to be used in the program and shall 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 and **[insert other standing authorized expenditures]**. Otherwise, the purchasing card may only be used to purchase goods and services approved by the board or the superintendent or designee. The maximum amount that may be charged in a single day is \$**[insert amount]**.

**Unauthorized Purchases.** In no event shall the purchasing card be used for personal purchases, purchases that are not ESUCC 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 ESUCC for the expense within ten days of the purchase or the discovery of the unauthorized purchase, whichever occurs first.

**Authorized Users.** The following individuals and individuals holding the following titles may be assigned an individual purchasing card and/or authorized to use an ESUCC purchasing card: **Executive Director, Technology Director, Coop Director**. The ESUCC 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 ESUCC shall also maintain a purchasing card in the name of the ESUCC. The named individuals may purchase ESUCC related goods and services with the ESUCC credit card only with authorization from the ESUCC Executive Director.

**Documentation.** Individuals seeking reimbursement for a purchasing card purchase shall submit an itemized receipt ***and*** a purchasing card receipt to the ESUCC. The itemized receipt shall include the name of the business, contact information, the date, a description of each item sufficient to give the ESUCC reasonable notice of the item purchased, and the price. ***A non-itemized credit card receipt alone is not sufficient.*** Designated ESUCC 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. Individuals shall maintain copies of any documentation submitted to the ESUCC.

**Suspension or Termination of Privileges.** The ESUCC or the Executive Director (or his or her designee) (1) ***shall*** temporarily or permanently suspend the purchasing card privileges of any individual who 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 shall be immediately closed and he or she shall return the purchasing card to the Executive Director or the ESUCC. Purchases that are not accompanied by the required documentation shall be considered unauthorized, and the

individual making the purchase shall reimburse the ESUCC 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 shall remain the property of the ESUCC.

**Purchase Review Procedures.** The Executive Director, or his or her designee, and **Board Treasurer** shall conduct independent reviews of credit card expenses, or a sample thereof, on a **monthly** basis. Any unlawful or unauthorized expenditure or other discrepancy shall be brought to the attention of the offending individual, if any, and the ESUCC. The Executive Director, or his or her designee, shall provide the ESUCC 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 ESUCC reasonable notice of the items purchased. Any unlawful or unauthorized purchase shall be addressed as provided in this policy or as otherwise allowed by law.

Adopted On: October 9, 2014

Reviewed On:

**3000-16. Sale or Disposal of ESUCC Property - Draft**

In selling school property, whether real or personal, the board of education shall be mindful of its financial obligation to the taxpayers of the school district. The board may sell school property in the manner it deems most appropriate for the particular property (e.g., by taking bids, by auction, or by selling the property for a specified price). The board shall take action at a regular meeting to approve the sale or disposal of property by a vote of the members before selling or disposing of it.

#### **4000-18. Staff Social Media Use.**

Social media is an important tool for communicating, keeping up-to-date with current developments in education, and for conducting research to enhance management, teaching, and learning skills. The ESUCC also uses social media accounts to provide information to ESUCC stakeholders. This policy is intended to ensure (1) appropriate use of social media by staff and (2) appropriate control of social media accounts belonging to or affiliated with the ESUCC. Staff should also refer to the ESUCC's policy on Staff Computer and Internet Usage.

##### **1.) Personal Versus ESUCC-Affiliated Social Media Use**

###### **a) Personal Social Media Use**

The ESUCC will not require staff members or applicants for employment to provide the ESUCC with their username and password to personal social media accounts.

The ESUCC will not require staff to add anyone to the list of contacts associated with the staff member's personal social media accounts or require a staff member to change the settings on his or her personal social media accounts so that others can or cannot view their accounts.

Staff members whose personal social media use interferes with the orderly operation of the ESUCC or who use social media in ways that are not protected by the First Amendment may be subject to discipline by the ESUCC.

Staff members who wish to begin using or to continue using the ESUCC name, programs, logos, or likeness as part of any social media profile must notify the Executive Director of the use, and must secure the Executive Director's permission to do so.

###### **b) ESUCC-Affiliated Social Media Use**

Any social media account which purports to be "the official" account of the ESUCC or any of its projects or affiliates (e.g., @ESUCCcoop) will be considered to be an account that is used exclusively for the ESUCC's business purpose. Staff members may not use "official" accounts for personal use.

Staff may be required to provide the Executive Director with the username and password to ESUCC-affiliated social media accounts.

Staff may be required to interact with specified individuals on ESUCC-affiliated social media accounts.

When staff use ESUCC-affiliated social media accounts to comment on ESUCC-related matters, they do not do so as private citizens and are therefore not entitled to First Amendment protections.

##### **2.) Staff Expectations in Use of Social Media – Applicable to Both Personal and ESUCC-Affiliated Use**

###### **a) General Use and Conditions**

Staff must comply with all ESUCC policies, contract provisions, and applicable rules of professional conduct in their social media usage. They must comply with the board's policy on professional boundaries between staff and students at all times and in both physical and digital environments.

Staff must obtain the consent of the Executive Director prior to posting any student-related information in order to make sure that the publication does not violate the Federal Education Records Privacy Act or any other laws. Staff must also comply with all applicable state and federal record retention requirements, even with regard to personal social media usage.

Staff must comply with all applicable laws prohibiting the use or disclosure of impermissible content, such as copyright laws, accountability and disclosure laws, and any other law governing the use of resources of a political subdivision. Questions about appropriate content should be referred to the Executive Director.

#### b) Acceptable Use

Staff may use social media for educational and training purposes.

Staff may use social media for ESUCC-related communication with fellow educators, students, parents, and patrons.

#### c) Unacceptable Use

Staff shall not access obscene or pornographic material while at work or on any network owned or operated by any educational entity, on ESUCC-owned device or on ESUCC-affiliated social media accounts.

Staff shall not engage in any illegal activities, including the downloading and reproduction of copyrighted materials.

### 3) ESUCC-Affiliated Digital Content

#### a) General Use and Conditions for ESUCC-Affiliated Accounts

Staff must obtain the permission of their supervising administration prior to creating, publishing, or using any ESUCC-affiliated web pages, microblogs, social media pages or handles, or any other digital content which represents itself to be ESUCC-related, or which could be reasonably understood to be ESUCC-related. This includes any content which identifies the ESUCC ESUCC by name in the account name or which uses the ESUCC's mascot name or image.

Staff must provide administrators with the username and password for all ESUCC-affiliated accounts and must only publish content appropriate for the ESUCC setting. Staff may not provide the username and password to ESUCC-affiliated accounts to any unauthorized individual, including students and volunteers.

#### b) Moderation of Third Party Content

The purpose of ESUCC-related social media accounts is to disseminate information. No ESUCC-related or ESUCC-affiliated social media account covered by this policy shall permit

comments by the public unless otherwise approved by the superintendent. All comment functions for applications such as Facebook and Instagram must be turned to “off” without this approval.

In the event the superintendent permits content created by anyone other than the administrator of the account to appear on the account’s pages, such as comments made by students, parents, and patrons, the account administrator must monitor the content to ensure it complies with this policy. Posts, comments, or any other content made on the account’s pages may be removed when the content meets any of the following conditions:

- Is obscene, lewd, or appeals to prurient interests;
- Contains information relating to a student matter or personnel matter which is protected under or prohibited by state or federal law;
- Contains threatening, harassing, or discriminatory words or phrases;
- Incites or is reasonably anticipated to incite violence, illegal activity, or a material and substantial disruption to ESUCC operations or activities; or
- Contains any other threat to the safety of students and staff.

Every account administrator must keep a copy of any removed content and must provide a copy to the superintendent along with written notification for the reason the post has been removed. All questions about the appropriateness of removal must be directed to the superintendent.

## **4000-19. De Minimis Use of Public Resources.**

### Incidental or De Minimis Use of Public Resources

The ESUCC 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-district employees for personal purposes, such as e-mails or text messages with a spouse using district 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 district. If an employee is unsure whether the primary purpose serves the interests of the district, 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 district’s digital citizenship curriculum while off duty;
- Using district-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 Executive Director or the Executive Director’s designee. The board intends to allow the Executive Director to authorize such uses on a case-by-case basis to the maximum extent permitted by the Act; and
- Other uses by the Executive Director or Council members authorized by the ESUCC president. The ESUCC intends to allow the Council 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 ESUCC 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 district will not

indemnify or account for any personal use of public resources by the Council 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 ESUCC's internet, computers, or other technology to access obscene or pornographic material, sext, or engage in any illegal activities.

## **Proposed Policy Wording for OER Participation**

### School Districts (Public or Private)

**Participation in OER.** Collaboration through Open Educational Resources (OER) is beneficial in many ways for the district and for the education community in Nebraska. The Educational Service Unit Coordinating Council (ESUCC) and the Nebraska Department of Education (NDE) have provided a platform to share educational materials with OER designation which can be reviewed and aligned to Nebraska's state standards. The board authorizes the superintendent to allow staff members to participate in OER, at the superintendent's discretion, both by incorporating OER materials into the curriculum adopted by the board and by sharing materials and resources owned by the district. Those materials and resources include works made for hire by district employees. Unless the superintendent or superintendent's designee(s) determines otherwise, materials owned by the district may be shared to the ESUCC-NDE OER Collection(s) with the Creative Commons Attribution License designation of either (1) "Noncommercial-Share Alike," which is universally noted as "CC BY-NC-SA"; or (2) "Attribution-Noncommercial-No Derivatives," which is universally noted as "CC BY-NC-ND."

### ESUs

**Participation in OER.** Collaboration through Open Educational Resources (OER) is beneficial in many ways for the ESU's member districts and for the education community in Nebraska. The Educational Service Unit Coordinating Council (ESUCC) and the Nebraska Department of Education (NDE) have provided a platform to share educational materials with OER designation which can be reviewed and aligned to Nebraska's state standards. The board authorizes the administrator to allow staff members to participate in OER, at the administrator's discretion, both by incorporating OER materials into the services provided by the ESU to member districts and by sharing materials and resources owned by the ESU. Those materials and resources include works made for hire by ESU employees. Unless the administrator or administrator's designee(s) determines otherwise, materials owned by the ESU may be shared to the ESUCC-NDE OER Collection(s) with the Creative Commons Attribution License designation of either (1)

"Noncommercial-Share Alike," which is universally noted as "CC BY-NC-SA"; or (2) "Attribution-Noncommercial-No Derivatives," which is universally noted as "CC BY-NC-ND."

**ESUCC Committee Membership  
2017-2018**

	Executive	Finance, Audit, Budget	Legislative	Professional Development	Cooperative Purchasing	Ed Tech & Technology Infrastructure	P
Heimann, ESU 1 (2)		X				X	
DeTurk, ESU 2 (3)				X		X (Chair)	
Schooes, ESU 3 (3)	X (Treasurer)	X (Chair)	X				
g Robke, ESU 4 (2)					X	X	
da McNiff, ESU 5 (2)				X			
Shoemake, ESU 6 (2)					X	X	
inne Polk, ESU 7 (3)	X (President Elect)			X (Vice Chair)			
Mowinkel, ESU 8 (2)		X			X (Chair)		
g Lofquist, ESU 9 (7)	X (President)	X (Vice Chair)	X	X	X	X	
Wheelock, ESU 10 (3)			X (Vice Chair)		X	X (Vice Chair)	
Barnes, ESU 11 (2)		X	X				
f West, ESU 13 (3)	X (Past President)		X	X (Chair)			
Calvert, ESU 15 (3)			X (Chair)		X (Vice Chair)		
Paulman, ESU 16 (2)				X	X		
ne Erickson, ESU 17 (3)	X (Secretary)	X					
h Standish, ESU 18 (3)		X	X				
Wickham, ESU 19 (2)				X		X	

Committee Membership (47)	5	7	7	7	7	7	7
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## ESUCC Home Base (Aug 2018)

Dave Ludwig  
Fremont Public Schools  
957 N Pierce Street  
Fremont, NE 68025

Beth Kabes (BlendEd)  
ESU #7  
2657 44<sup>th</sup> Ave  
Columbus, NE 68601  
\*\* 160 square feet\*\*

Rhonda Eis (IMAT)  
ESU #5  
900 West Court Street  
Beatrice, NE 68310  
\*\* 10.5' X 10.5' or 110.25 square feet\*\*

Priscilla Quintana, Colleen Lentz (COOP)  
ESU #17  
1292 East 4<sup>th</sup> Street  
Ainsworth, NE 69210  
\*\* Colleen 172 sq. ft., Priscilla 158 sq. ft., Shared: Meeting room/copier 432 sq. ft., Storage room 200 sq. ft., for a Total 1134 sq. ft.\*\*

Craig Peterson  
ESU #11  
412 W. 14<sup>th</sup> Ave.  
Holdrege, NE 68949  
\*\*10'x10' office

Wade Fruhling, Dawn Litt (SRS)  
NASB Building, Suite 200  
1301 Stockwell Street  
Lincoln, NE 68502  
\*\*Approximately 586 square feet\*\*

Scott Isaacson, Project Coordinator, Deb Hericks, Mike Danahy  
ESU #3  
6949 South 110<sup>th</sup> Street  
Omaha, NE 68128  
\*\* The space includes office plus we have a server rack in the server room that takes up about 4'3" space\*\*

Nancy Movall (Innovation Grant BlendED/NROC Implementation Coordinator)  
Yutan, NE

### **Other sites hosting equipment:**

University of Lincoln/Nebraska Hall  
\*\*4'3"– space for one rack of servers\*\*

KAREN A. HAASE  
STEVE WILLIAMS  
BOBBY TRUHE



TIMOTHY J. MALM  
COADY H. PRUETT  
SHARI RUSSELL, Paralegal

August 13, 2018

Dave Ludwig, Executive Director  
Educational Service Unit Coordinating Council  
6949 South 110<sup>th</sup> Street  
LaVista, NE 68128

**Re: *Legal Representation Agreement***

Dear Mr. Ludwig:

We are delighted to confirm our agreement to serve as legal counsel for Educational Service Unit Coordinating Council. Our representation will begin upon our receipt of a copy of this Agreement. Our practice is to provide all clients with a written engagement letter so that you have a clear understanding of the terms of our representation of you and KSB School Law's policy for billing you for legal services.

We will charge hourly rates in connection with all of the work performed for your school. We send statements each month to the board in care of the superintendent. Our statements are due and payable each month. It is our firm's practice to record time in increments of one-tenth of an hour. We will assign tasks related to representing you among all of us, based on expertise, cost and availability. Karen Haase's current hourly rate is \$310, Steve William's current hourly rate is \$285.00 and Bobby Truhe's current rate is \$220.00. We have two associate attorneys. Tim Malm's current hourly rate is \$165.00 and Coady Pruett's current hourly rate is \$200.00. Shari Russell is our paralegal and her current hourly rate is \$160.00. Any work completed by our law clerk will be billed at the hourly rate of \$100.00. Our hourly rates are annually adjusted.

When our firm incurs various expenses such as photocopying, postage, mileage, and communications (long distance telephone and fax), we also include those costs in our monthly statements.

KSB School Law is not requiring you to pay an up-front retainer. However, we reserve the right to do so in the event that specific circumstances arise hereafter that would, in our judgment, require the deposit of a retainer. Any retainer provided to us will be deposited in KSB School Law's trust account.

KSB SCHOOL LAW, PC, LLO

301 SOUTH 13<sup>TH</sup> STREET, SUITE 210 • LINCOLN, NEBRASKA 68508 • O: (402) 804-8000 • F: (402) 804-8002 • KSB SCHOOL LAW.COM

By signing this Agreement, you give KSB School Law permission to collect fees and expenses from the retainer based on our monthly billing. KSB School Law will provide you with its statement of fees and expenses paid from the retainer. You may be called upon by KSB School Law, in our discretion, to replenish the retainer amount periodically. Any unused portion of the retainer remaining after all legal fees and expenses have been paid will be returned to you. You will not earn or be paid interest on the retainer.

Our representation of the school will continue until the matter you have retained us to advise you upon is concluded, you terminate our agreement, or we withdraw from the representation. Our representation of you does not include tax advice. You may terminate our representation of you at any time, with or without reason. Your termination of KSB School Law's representation in no way relieves you of the obligation to pay for legal services that have been rendered and expenses incurred prior to the time of termination or that are necessitated to make an orderly transfer of our file materials. Likewise, KSB School Law reserves the right to withdraw from representation under circumstances permitted by the applicable rules of professional conduct. At the conclusion of our representation of you, we will retain your legal files for a period of 7 years after we close our files. At the expiration of the 7 year period, we may destroy these files unless you notify us in writing that you wish to take possession of them. We reserve the right to charge administrative fees and costs associated with researching, retrieving, copying, and delivering such files.

KSB School Law has determined that there are no current conflicts of interest in our representation of you. However, as new matters arise in our ongoing representation of you, it is possible that new circumstances could present a conflict of interest concerning that new matter. If we become aware of a conflict we will promptly advise you and exercise our ethical obligation to withdraw or decline representation on the conflicting matter as required by the applicable rules of professional conduct. By signing this agreement, you acknowledge that we have informed you of the risks and the consequences of potential conflicts.

Please give one of us a call or drop us an e-mail at [ksb@ksbschoollaw.com](mailto:ksb@ksbschoollaw.com) if you have any questions about this engagement letter, any bill for services, or any other matter pertaining our representation of you.

Mr. Dave Ludwig  
August 13, 2018  
Page 3

Yours very truly,

KSB School Law, PC, LLO

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Steve Williams

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Bobby Truhe

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(605) 670-2968

Approved and agreed to this \_\_\_\_ day of \_\_\_\_\_.

---

Superintendent or other Authorized Representative

## Educational Service Unit Administrators 2018-2019

### **Bill Heimann**

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